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EXECUTIVE ORDERS, PROCLAMATIONS AND ADMINISTRATIVE ORDERS

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 626

DECLARING THE FOURTH WEEK OF NOVEMBER OF EVERY YEAR AS PHILIPPINE AVIATION WEEK

In order to make the people appreciate the vital role of aviation in the progress and security of the nation, I, Carlos P. Garcia, President of the Philippines, by virtue of the powers vested in me by law, do hereby declare the fourth week of November of every year as Philippine Aviation Week.

I enjoin all government officials and employees and all citizens of the Philippines to lend their full assistance and cooperation in the appropriate observance of this week.

Proclamation No. 352, dated November 5, 1952, is hereby revoked.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 12th day of October, in the year of Our Lord, nineteen hundred and fifty-nine, and of the Independence of the Philippines, the fourteenth.

[SEAL]

CARLOS P. GARCIA
President of the Philippines

By the President:

ENRIQUE C. QUEMA
Assistant Executive Secretary

005368

REPUBLIC ACTS

Enacted during the Fourth Congress of the Philippines Second Special Session

H. No. 3663

[REPUBLIC ACT NO. 2609]

AN ACT TO AUTHORIZE THE CENTRAL BANK OF THE PHILIPPINES TO ESTABLISH A MARGIN OVER BANKS' SELLING RATES OF FOREIGN EXCHANGE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The provisions of any law to the contrary notwithstanding when and as long as the Central Bank of the Philippines subjects all transactions in gold and foreign exchange to licensing in accordance with the provisions of section seventy-four of Republic Act Numbered Two hundred sixty-five, the Central Bank, in respect of all sales of foreign exchange by the Central Bank and its authorized agent banks, shall have authority to establish a uniform margin of not more than forty per cent over the banks' selling rates stipulated by the Monetary Board under section seventy-nine of Republic Act Numbered Two hundred sixty-five, which margin shall not be changed oftener than once a year except upon the recommendation of the National Economic Council and the approval of the President. The Monetary Board shall fix the margin at such rate as it may deem necessary to effectively curtail any excessive demand upon the international reserve.

In implementing the provisions of this Act, along with other monetary, credit and fiscal measures to stabilize the economy, the monetary authorities shall take steps for the adoption of a four-year program of gradual decontrol.

SEC. 2. The margin established by the Monetary Board pursuant to the provision of section one hereof shall not be imposed upon the sale of foreign exchange for the importation of the following:

I. DRUGS AND MEDICINES

a. Amebacides, except emetine preparations.

b. Amino acid preparations and analgesic poultices.

c. Anaesthetics, all types.

d. Antiacids, absorbents, and preparations.

e. Antibiotics and preparations, except dosage forms of penicillin, streptomycin and/or combinations.

f. Anticholinergic preparations.

g. Anticoagulants.

h. Anti-leprosy preparations.

i. Antimalarials, except quinine preparations.

j. Antispasmodic, anticonvulsant, and sympathomimetic preparations.

k. Antitoxins, vaccines, sera, toxoids, and antigens.

l. Homogenized baby foods.
m. Diagnostic and laboratory reagents.
n. Digitalis and preparations.
o. Drugs (crude or otherwise), chemicals (simple or compound) for pharmaceutical manufacture and chemicals to be used for the manufacture of insecticides and pesticides when, in both cases, imported by duly licensed laboratories or manufacturers.
p. Drugs and medicines for the use of the dental and veterinary professions.
q. Ergot and preparations.
r. Fumigants, disinfectants, insecticides, pesticides and preparations.
s. Gland products and synthetic substitutes.
t. Hemostatics for topical use.
u. Hexylresorcinol preparations.
v. Insulin, all forms.
w. Liver extract.
x. Mercurial diuretics.
y. Narcotics and hypnotics, natural or synthetic, and preparations.
z. Pharmaceutical glassware and containers not manufactured locally.
aa. Plasma.
bb. Saccharin and substitutes.
cc. Salt substitutes.
dd. Steroids and preparations.
ee. Surgical antiseptics.
ff. Vitamins.
gg. Other drugs and medicines which are not mere substitutes of those locally produced, and not yet commercially available, authorized by the Secretary of Health each year upon the recommendation of the Philippine Medical Association and the Philippine Federation of Private Medical Practitioners: *Provided,* That the Secretary of Commerce and Industry shall certify as to their not being commercially available.

II. MEDICAL, DENTAL AND HOSPITAL SUPPLIES

a. Adhesives, plasters, bandages, gauzes, and dressings.
b. Cottons, absorbents or synthetic substitutes.
c. Dental instruments, equipment and supplies.
d. Diagnostic instruments.
e. Hospital and surgical rubber goods including catheters, and plastic venoclysis sets.
f. Electro-medical therapy equipment.
g. Optometric instruments and supplies.
h. Surgical and medical instruments, equipment and supplies, artificial limbs and splints, including operating lights and sterilizers, except examining and treatment tables.
i. X-Ray equipment, films and supplies, including contrasts media.
j. Radium and radioactive materials for therapy.

k. Spare parts for dental electro-medical, therapy and X-Ray equipment.

l. Supplies and equipment to be used for the collection and administration of blood.

III. Fertilizers and soil conditioners and fertilizer components needed in the manufacture of fertilizers.

IV. Spare parts when imported and used exclusively by end-users for agricultural industries.

V. Textbooks, reference books and religious books approved by the Board of Textbooks and/or certified by the Secretary of Education; and technical and scientific books, as certified by the Secretary of Education.

VI. Scientific and technical equipment and materials imported and to be used exclusively by the end-users for research and scientific work as certified by the National Science Development Board.

VII. Newsprint, directly imported by publishers for their exclusive use in the publication of books, pamphlets, magazines, and newspapers.

VIII. Unexposed cinematographic films, raw materials, equipment and spare parts imported by Filipino movie film industries necessary in the production of local moving pictures.

IX. Canned white salmon and large sardines in plain tomato sauce; corned beef; raw cotton, when procured under U. S. Public Laws Numbered Four hundred eighty and Four hundred two and imported by and for the exclusive use of the end-users; and breeding and dairy cattle.

X. Canned condensed milk and milk in all forms, for which there is no substitute locally produced.

XI. Cyanide, metallurgical re-agents and/or flotation chemicals, grinding balls, explosives and dynamite when imported by lawfully authorized end-users for their exclusive use.

XII. Materials, if not locally produced or available, for the manufacture of containers for locally made or manufactured food products.

XIII. Seeds, for planting purposes only, of potato, cabbage, peas, lettuce, wongbok, celery, cauliflower, California pepper, turnip, carrot, radish, mustard, sweet peas, onions, eggplant, gubo (Japanese root crop), tomatoes, Kentucky wonder beans, cucumber, tobacco and sugar beets, when imported by end-users themselves or through their cooperatives for their exclusive use, as certified by the Secretary of Agriculture and Natural Resources.

XIV. Spare parts to be used in the maintenance and/or repair of vessels of Philippine registry when imported by and for the exclusive use of end-users.

XV. Poultry and animal food ingredients other than cereals or derivatives thereof, provided that they are not locally produced.

XVI. Spare parts to be used in the maintenance and/or repair of commercial aircrafts of Philippine

registry when imported by and for the exclusive use of end-users.

XVII. Unassembled kerosene air pressure lamps and other fishing paraphernalia when imported by end-users or through their cooperatives for their exclusive use.

XVIII. Urea formaldehyde for the manufacture of plywood and hardboard when imported by and for the exclusive use of end-users.

XIX. Payment of premiums by veterans on life insurance policies under the government of the United States.

XX. Spare parts for machineries used by cottage industries when imported by end-users or through their cooperatives for their exclusive use.

SEC. 3. The provisions of this Act shall not apply to the liquidation of drafts drawn under letters of credit nor of contractual obligations calling for payment of foreign exchange issued, approved and outstanding as of the date this Act takes effect and the extension thereof, with the same terms and conditions as the original contractual obligations: *Provided,* That the repayment of loans contracted by the government of the Philippines with foreign governments and/or private banks and the importation of machineries and equipment by provinces, cities or municipalities for the exclusive use in the operation of public utilities fully owned and maintained by them shall likewise be exempted from the operation of this Act.

SEC. 4. No foreign exchange shall be sold to an importer except under the following undertaking and conditions executed in writing by the importer before the corresponding license is issued:

(*a*) That he will declare the true purchase price and true and accurate landed cost of the commodities or merchandise sought to be imported; and

(*b*) That he will not fix prices over the landed costs of the commodities or merchandise sought to be imported in an unreasonable amount, or in violation of any existing law or regulation.

SEC. 5. Any proceeds resulting from the operations of section one shall accrue to the Central Bank of the Philippines and be governed by the provisions of section forty-one of Republic Act Numbered Two hundred sixty-five.

SEC. 6. It shall be unlawful for any person who has obtained dollars for his benefit from any agency or instrumentality of the government upon application filed by him to sell, transfer, assign, convey or otherwise alienate the same or any interest thereon to any other person.

SEC. 7. The Monetary Board of the Central Bank of the Philippines shall prescribe and promulgate rules and regulations necessary to carry out the provisions of this Act.

SEC. 8. Any person violating any provision of this Act or any of the rules or regulations promulgated pursuant thereto shall, upon conviction, be sentenced to pay a fine not exceeding twenty thousand pesos or suffer imprisonment for a period not exceeding two years, or both: *Pro-*

vided, however, That, if the offender is a corporation, association or partnership, the penalty shall be imposed upon the president, directors, managers, managing partners, as the case may be, and/or the person charged with the administration thereof. And if he is an alien, in addition to the penalties herein prescribed, he shall be deported without further deportation proceedings. In addition to the penalties herein provided for, the forfeiture of the right hereafter to purchase any foreign exchange shall be imposed.

SEC. 9. If any provision or section of this Act or the application thereof to any person or circumstance is held invalid, the other provisions or sections of this Act, and the application of such provision or section to other persons or circumstances shall not be affected thereby.

SEC. 10. This Act shall take effect upon its approval and shall remain in force until December 31, 1964.

Approved, July 16, 1959.

S. No. 19
H. No. 1050

[REPUBLIC ACT NO. 2610]

AN ACT TO STABILIZE AND CHECK THE SPIRALING OF THE PRICES OF CERTAIN COMMODITIES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. It is hereby declared to be the national policy of the state during periods of short supply or of unreasonable price levels to protect the interest of the consumer by preventing, locally or generally, the scarcity, monopolization, hoarding, injurious speculation, manipulation, and profiteering, affecting the supply, distribution and movement of both imported and locally manufactured or produced foodstuffs, textile, clothing, drugs, medicines, paper and paper products, school supplies, construction materials, agricultural and industrial machinery and their spare parts, fertilizers, insecticides and weedicides, and fuel and lubricants, and other commodities control of the prices of which may be deemed essential to public interest.

SEC. 2. To implement the above-declared policy and to carry out the provisions of this Act, the President of the Philippines is hereby authorized, upon certification of the National Economic Council that a commodity is in short supply or there exists reasonable ground to believe it will disappear from the open market, or the price thereof has risen to an abnormal level:

(1) To establish, by executive order, such maximum prices at which the commodity may be sold at retail or wholesale, as shall be generally fair, reasonable and equitable;

(2) To direct the NARIC, with respect to rice and corn, and the NAMARCO, with respect to other commodities, to import the commodity in short supply for distribution in the local market, and such importation

shall not be subject to any tax or foreign exchange control, but should the Price Administration Board be created, this function shall be exercised upon its recommendation;

(3) To impound at reasonable cost, if public interests demand, local inventories of the commodity in short supply and order their distribution by the NAMARCO in the local market;

(4) To promulgate, by Executive Order, such rules and regulations as may be necessary to carry out the policy declared in Section 1 hereof and enforce the powers granted herein; and

(5) To designate such existing board, instrumentality or agency of the government, hereinafter called Agency, to assist him in the execution of this Act, or he may upon such certification by the National Economic Council, create a Price Administration Board which shall be composed of a Chairman, who shall be at the same time the Price Administrator, the General Manager of the National Marketing Corporation (NAMARCO), the General Manager of the National Rice and Corn Corporation (NARIC), the Chief of the Philippine Constabulary and the Solicitor General and four other members, one to represent producers, one to represent the distributors, and the two others to represent the consumers, one of whom shall be a woman and the other to represent labor, who shall be appointed by the President of the Philippines with the consent of the Commission on Appointments.

The Chairman shall receive a compensation of twelve thousand pesos *per annum* and the four other appointive members shall each receive a *per diem* of twenty-five pesos for each meeting actually attended by them and in no case to exceed five hundred pesos per month. Subject to the Civil Service Law, rules and regulations, the Price Administrator shall appoint, suspend and remove and fix the compensation of the other officials and employees of the Board.

In the provinces, municipalities and chartered cities, the Agency or the Price Administration Board shall enforce the provisions of this Act through the provincial price administration committee, the municipal price administration committee and the city price administration committee, respectively, and shall have general supervision and control over the said committees insofar as their duties pertain to the enforcement of this Act.

There shall be a provincial price administration committee in each province, to be composed of the provincial fiscal, as chairman, the provincial commander of the Philippine Constabulary, the division superintendent of schools, the provincial treasurer, the commercial agent of the province or one of them so designated by the Agency or Price Administration Board, and the head of a civic organization appointed by the Price Administrator, as members. In provinces where there are two or more civic organizations, the heads of at least two such organizations shall be appointed as members of the Committee.

There shall be a municipal price administration committee in each municipality, to be composed of the municipal treasurer, as chairman, the chief of police, the senior public school principal teacher, and the head of a civic

organization appointed by the Price Administrator, as members: *Provided,* That in municipalities where there are two or more civic organizations, the heads of at least two of such organizations shall be appointed as members of the committee.

There shall be a city price administration committee in each chartered city, to be composed of the city attorney or fiscal, as chairman, the chief of police, the city superintendent of schools, the city treasurer, and the head of a civic organization appointed by the Price Administrator as members. In cities where there are two or more civic organizations, the heads of at least two such organizations shall be appointed as members of the committee. The provincial and city price administration committees shall appoint an executive director with a corresponding staff for their respective committees who shall be responsible for the management and implementation of the policies of their respective committees.

SEC. 3. For the purposes of this Act an abnormal price level shall be deemed to exist whenever the price, retail and/or wholesale, of a commodity has risen to an unreasonable level considering public interest, the procurement cost of the commodity and the just and fair margin of profit which the wholesaler or retailer should realize.

To determine the maximum prices provided in Section 2(1) hereof, the following factors shall be taken into account:

(1) The estimated supply of the commodity available in the market;

(2) The cost of production of the commodity, if locally produced, or its landed cost and the duties or taxes paid thereon if imported;

(3) The cost of distribution which shall include the cost of transportation, storage or warehousing dues, rentals, management, salaries and wages; and

(4) The reasonable margin of profit which should be allowed to insure a continuous supply of the commodity and/or encourage the local production thereof.

SEC. 4. In order to facilitate the determination of the maximum selling prices of any commodity under price control, and the enforcement of the provisions of this Act, the President or the Price Administration Board if created, may require the assistance of officials, agents, employees, agencies or instrumentalities of the government and, where necessary, require them to act, without extra compensation, as his or its deputies and agents.

Such deputies, agents, officials, employees and/or agencies of the government deputized by authority of the President of the Philippines or the Board for the purpose of enforcing the provisions of this Act, shall have the following powers:

(1) With the written authority of the chief or head or official in charge of the price control agency in any province, city or municipality, to examine bills of lading, bills of sales, invoices, books, records and other pertinent documents owned or in the possession of any importer, producer, manufacturer, wholesaler or retailer, and for this purpose they may, upon such written authority, by *subpoena* or *subpoena duces tecum,* require any person to

appear and testify or to appear and produce books, records and other documents, or both; and

(2) Upon the issuance of a search warrant by a competent court, to inspect premises, bodegas, warehouses storerooms where stocks of controlled commodities or the documents and papers above referred to are kept; and in the case of contumacy by, or refusal to obey a *subpoena* or *subpoena duces tecum* issued to any such person, the municipal court or the justice of the peace court of the city or municipality in which such importer, wholesaler, retailer, manufacturer or producer is found or resides or transacts business, upon application, and after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce books, records and other writings, or both, and any failure to obey such order of the court shall be punished by such court as contempt thereof, with a fine of not more than six hundred pesos or imprisonment of not more than six months, or both.

SEC. 5. Within fifteen days after the Executive Order establishing control of prices under Section 2(1) hereof shall have taken effect, all importers, manufacturers or producers, wholesalers, and retailers with stocks worth not less than ₱1,000 of the commodity or commodities under controlled prices shall file with the Agency designated by the President or the Board under Section 2(5) hereof, or with its duly authorized representative a complete and true inventory of their stock under oath. Thereafter, all expected or subsequent shipments of such commodities by importers shall be declared under oath to the Agency or its duly authorized representative within five days after receipt of the corresponding bills of lading and other shipping documents. All merchandise reported as required in this Act shall be deemed offered for sale.

Any undeclared stock shall be considered *prima facie* evidence of hoarding and may be impounded by the Agency or the Board and immediately disposed of through the NAMARCO at the controlled prices thereof. The proceeds of such sale shall be deposited with the court of justice having jurisdiction over the criminal case for violation of this section and the rules and regulations promulgated pursuant thereto. Upon conviction of the owner or possessor of such excess stock, the said impoundage shall be considered as penalty in addition to that prescribed in Section 9 hereof, but in the event the owner or possessor accused of hoarding is found innocent, the said excess stock shall be returned to him or, if already sold, the proceeds of the sale be given to him without any deduction.

SEC. 6. Importers, manufacturers or producers and wholesalers of commodities the prices of which have been placed under control shall transmit to the Agency or Board or its duly authorized representative a monthly report of their sales under oath.

SEC. 7. All persons engaged in the retail sale of commodities the prices of which have been placed under control shall post in a conspicuous place in their establishment, store or stall a list of all commodities displayed

and offered for sale with their corresponding prices with the corresponding quantities purchased by them and the corresponding dates of their purchase, and in addition, shall attach to said merchandise price tags in such manner as to be within the plain view of the public.

SEC. 8. No importer, manufacturer or producer, wholesaler or retailer of any commodity the price of which has been placed under control shall refuse to sell any such merchandise if he has such merchandise in stock.

SEC. 9. Imprisonment for a period of not less than two years nor more than ten years and/or a fine of not less than two thousand pesos nor more than ten thousand pesos shall be imposed upon any person who, during the effectivity of the Executive Order establishing control over the price of commodities:

(1) sells at retail or wholesale any commodity in excess of the maximum prices established by the President of the Philippines under Section 2(1) hereof;

(2) purchases any commodity in excess of the maximum prices as provided for in the immediately preceding paragraph, unless he makes a denunciation of the act to the proper authorities within seven (7) days or unless it can be shown by satisfactory proof that the purchase was done under circumstances of compelling necessity, or in good faith;

(3) refuses to sell any commodity under price control which he keeps either as an importer, manufacturer or producer, wholesaler or retailer in his establishment, store or stall, whether displayed or not;

(4) having in stock merchandise the price of which is under control, shall transfer the same or make a false or fictitious sale of all or any portion thereof so as to defeat the purpose of this Act;

(5) fails or refuses to file with the Agency or Board or its duly authorized representative an inventory of his stock and/or to transmit bills of lading or bills of sale; or

(6) violates any provision of this Act or any order, rule or regulation issued pursuant to the provisions of this Act: *Provided, however*, That in the case of aliens, in addition to the penalty herein provided, the offender shall, upon conviction, be subject to immediate deportation without the necessity of any further proceedings on the part of the Deportation Board: *Provided, further*, That if the offender is a naturalized Filipino citizen, in addition to the penalty hereinabove provided, his naturalization certificate shall be cancelled.

In the case of corporations, partnerships or associations, the president, managing director or manager shall be held liable under this Section.

In addition to the penalties prescribed above, the persons, corporations, partnerships or associations found guilty of any violation of this Act or of any order, rules or regulations issued pursuant to its provisions shall be barred from the wholesale and retail business for a period of five years for the first offense, and shall be permanently barred for the second offense; and in the case of importers, as additional penalty, they shall be placed on the blacklist

of the Central Bank and their import license shall immediately be revoked.

In case the violation is committed by, or in the interest of a foreign juridical person duly licensed to engage in business in the Philippines, such license to engage in business in the Philippines shall immediately be revoked.

Any government officer or employee, who, by neglect or connivance, has enabled an importer, wholesaler, retailer or any person who has the above described commodities in his control or possession, to hide or transfer his stock, or has in any manner aided or abetted in the violation or circumvention of the provisions of this Act, shall be held criminally liable as co-principal under this section and shall, in addition, suffer the penalty of perpetual absolute disqualification to hold public office. Any government officer or employee who shall use the powers vested upon him by this law or by rules and regulations pursuant thereto, to obtain money, benefit or anything of value, or being duly authorized by the Agency or Board to act as its agent, shall divulge to any person, or make known in any other manner than may be authorized by law, any information regarding the income, method of operation or other confidential information regarding the business of any person, association or corporation, knowledge of which was acquired by him in the course of the discharge of his official duties, shall be punished by both a fine of not less than five hundred pesos nor more than five thousand pesos and imprisonment of not less than two years nor more than five years.

The failure or refusal on the part of the seller of any commodity to issue the corresponding serially-numbered receipt or invoice required to be issued to the purchaser under existing law, rules or regulations, shall be *prima facie* evidence that the commodity was sold in excess of the authorized maximum selling price.

SEC. 10. If any provision of this Act or the applicability of such provision to any person or circumstance shall be held invalid, the validity of the remainder of this Act and the applicability of such provision to other persons or circumstances shall not be affected thereby.

SEC. 11. The sum of three hundred thousand pesos or so much thereof as may be necessary is hereby appropriated out of any funds in the National Treasury not otherwise appropriated to carry out the provisions of this Act.

SEC. 12. The orders, rules and regulations that may be promulgated by the President pursuant to the provisions of this Act shall take effect fifteen days after their publication once a week for two consecutive weeks in at least two newspapers, one in English and another in the National Language, of general circulation in the Philippines and fifteen days after the same has been posted at the entrance of the City Hall or municipal building of each city, municipality or municipal district in English and in the local dialect. This Act shall be in force until December 31, 1960 unless extended or sooner terminated by concurrent resolution of Congress: *Provided, however,* That any extension of the effectivity of this Act as above provided for may be terminated at any time also by concurrent resolution

of Congress. The orders, rules or regulations promulgated by the President pursuant to the provisions of this Act shall continue to be in force until terminated by Presidential proclamation or by concurrent resolution of Congress, but in no case to extend beyond the effectivity of this Act: *Provided, further,* That convictions rendered under this Act or under the duly promulgated orders, rules or regulations issued pursuant thereto shall remain valid and enforceable, and prosecutions of offenses committed during the effecivity thereof shall continue and shall not be barred until terminated by conviction or acquittal of the accused.

SEC. 13. This Act shall take effect upon its approval.

Approved, July 16, 1959.

S. No. 379

[REPUBLIC ACT NO. 2611]

AN ACT AMENDING CERTAIN SECTIONS OF REPUBLIC ACT NUMBERED ONE THOUSAND SEVEN HUNDRED EIGHTY-NINE ENTITLED "AN ACT PRESCRIBING THE NATIONAL POLICY IN THE PROCUREMENT AND UTILIZATION OF REPARATIONS AND DEVELOPMENT LOANS FROM JAPAN, CREATING A REPARATIONS COMMISSION TO IMPLEMENT THE POLICY, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES".

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Paragraphs (*a*) and (*e*) of Section Two of Republic Act Numbered One thousand seven hundred eighty-nine are hereby amended to read as follows:

(*a*) *Capital goods and services.*—Pursuant to the policy declared in Section One hereof, the capital goods and services received as reparations shall be made available to approved government projects for each year included in the National Economic Rehabilitation and Development Program upon application from the agency concerned and duly endorsed by the proper department head concerned and the National Economic Council, as well as to Filipino citizens and entities wholly owned by Filipino citizens, who will themselves utilize such goods and/or services as *bona fide* producers or manufacturers: *Provided,* That the government shall not procure or utilize reparations goods for the purpose of entering into business in competition with private industries, where such industries have shown their capacity and readiness to serve the public fairly and adequately: *Provided, further,* That reparations intended for electrification, educational material, equipment and machineries, fire-fighting equipment, telecommunications, railroad, base metal mining, steel and cement manufacturing, logging and shipping shall be given top priority. The list of projects shall, upon approval of the President, be given the widest dissemination and publicity possible.

(*b*) * * *

(*c*) * * *

(*d*) * * *

(*e*) *Private sector preferred.*—In general, preference in the procurement of reparations goods and services shall be given to private productive projects: *Provided,* That during the first year of the effectivity of the Agreement all reparations goods and services which may be procured shall be earmarked exclusively for government projects, and, thereafter, government projects shall be given preference only if they concern electrification, educational material, equipment and machineries, firefighting equipment, telecommunication or railroad or would foster the growth of private productive capacity, or are needed in the performance of essential public services, or involve productive projects which private enterprise is not yet capable or desirous of developing but which are urgently necessary in the interest of overall national economic growth: *Provided, further,* That where goods are procurable under the Agreement in sufficient quantities, no dollar allocation shall be made, nor any bond, debenture, or bond issues be floated for the importation of such goods for use in any government projects: *Provided, further,* That not more than sixty percent of the total value of the reparations to be paid by Japan during the twenty-year period shall be allocated to the private sector: *Provided, further,* That if the private sector does not or cannot make full use of its allocation, then the portion not so used shall be made available to the government.

SEC. 2. Paragraphs (*a*), (*d*) and (*e*) of Section five of Republic Act Numbered One thousand seven hundred eighty-nine are hereby amended to read as follows:

(*a*) For the purpose of implementing the provisions of this Act, the Reparations Agreement, and the exchange of notes on reparations loans, there is hereby created the Reparations Commission, hereinafter referred to as the Commission, which shall be composed of a Chairman and two other members appointed by the President of the Philippines, with the consent of the Commission on Appointments, who shall serve until removed for cause or by reason of death or disability. The Chairman shall receive a salary of eighteen thousand pesos *per annum* and the other members, fifteen thousand pesos *per annum* each. All decisions of the commission shall be by majority vote.

(*b*) * * *

(*c*) * * *

(*d*) All officials and employees of both the Commission and the Mission shall be properly bonded in the amount to be determined by the Commission subject to the approval by the auditor general according to the rank and responsibilities of the position of each official and employee. They shall, before assuming their office and every six months thereafter, file with the office of the President a schedule under oath of their assets and liabilities."

(*e*) The officials and employees of the mission shall be granted allowances and benefits similar to those granted members of the foreign service of equal or similar rank pursuant to the provisions of the Foreign Service Act, except the Chief of Mission who shall enjoy allowances equal to that of a minister.

SEC. 3. Section five of the same Act is hereby further amended by inserting between paragraphs (*e*) and (*f*) thereof the following:

(*e–1*) No allowances of any kind whatsoever shall be granted to the chairman or to any member of the reparations commission, or to any official or employee thereof, except when they are abroad on official mission in which case they shall be entitled to a *per diem* of not exceeding twenty U. S. dollars a day for the chairman, members of the commission, executive directors, and the auditor, and a *per diem* not to exceed fifteen U. S. dollars a day for other subordinate officials and employees.

SEC. 4. Section six of the same Act is hereby amended by inserting between paragraphs (*a*) and (*b*) thereof the following:

(*a–1*) to issue procurement orders for the acquisition of reparations goods and/or services on the basis of the agreed schedule. No procurement order for the acquisition of goods and/or services intended for government agencies shall be issued by the commission until after it shall have duly ascertained and verified that the agencies concerned (1) have the capacity and have duly provided for the repayment of the goods and/or services, in the event that such agencies are required to pay for the same, and (2) have the technical capacity to take delivery and utilize efficiently the goods applied for. No procurement order for the acquisition of reparations goods and/or services intended for private parties shall be issued by the commission until after it shall have duly ascertained and verified that the applicant concerned (1) has enough financial resources and capacity to pay, and (2) has the technical capacity to take delivery and utilize efficiently the goods applied for. The private applicant shall be required to submit proof to substantiate that both his financial resources and capacity to pay are commensurate with the value of the goods and/or services applied for, and that he has had experience or has contracted an appropriate number of experts in the particular field: *Provided,* That when only one unit of reparations goods is available, and there are various private applicants who satisfy the qualifications herein provided, preference shall be given to the applicant whose offer is most advantageous to the government, determined by the submission of sealed proposals by the qualified applicants, and if there are several units available, the commission shall, as equitably as possible, distribute them among the best qualified applicants.

SEC. 5. Paragraph (*b*) of Section six of the same Act is hereby amended to read as follows:

(*b*) To verify, alter and approve all proposed contracts and bids between the Mission in Japan and Japanese firms before the Mission accepts any bid, concludes any contract or sends it to the representative of the Japanese Government, so as to ascertain their compliance with terms of the Reparations Agreement with Japan, and with all the provisions of this Act, and to give opportunity to the Philippine entity or persons for whom the goods or services are being procured as reparations to examine all bids, make observations thereon, with the cooperation of the

Commission's technical staff, and verify the final contract specifications and terms thereof.

SEC. 6. Section six of the same Act is hereby amended by inserting between paragraph (*h*) and (*i*) thereof the following:

(*h–1*) to utilize such portion of the annual reparations payments from Japan corresponding to the government sector as may be necessary to guarantee repayment of the loans extended by any Japanese financial institution or institutions for the financing of the Marikina river multipurpose, the telecommunications and railroad expansion and improvement projects as may be agreed upon between the Government of the Republic of the Philippines and the Government of Japan: *Provided,* That the authority provided in this paragraph shall be exercised only to guarantee loans authorized by law: *Provided, further,* That procurement of goods under said loans shall be in the manner provided for in the procurement of any reparations goods by any government agency as provided for in this Act.

SEC. 7. Section ten of the same Act is hereby amended by adding a second paragraph thereof as follows:

Subject to the provisions of Commonwealth Act Numbered Two hundred forty-six, as amended, the Commission is authorized to approve supplemental special budgets for its operation for the fiscal year nineteen hundred and sixty in amounts not exceeding the difference between two million pesos and the total amount appropriated for the expenses of the Commission in the nineteen hundred and sixty General Appropriation Act.

SEC. 8. This Act shall take effect upon its approval.

Approved, July 20, 1959.

H. No. 2468

[REPUBLIC ACT NO. 2612]

AN ACT TO AUTHORIZE THE PRESIDENT OF THE PHILIPPINES TO NEGOTIATE AND CONTRACT WITH THE EXPORT AND IMPORT BANK OF TOKYO, JAPAN, OR WITH ANY OTHER FOREIGN FINANCIAL INSTITUTIONS OR FOREIGN MANUFACTURING CORPORATIONS OR THEIR DULY AUTHORIZED AGENTS, IN THE NAME AND ON BEHALF OF THE REPUBLIC OF THE PHILIPPINES, ONE OR SEVERAL LOANS, FOR THE PURPOSE OF FINANCING A NATIONWIDE TELECOMMUNICATIONS EXPANSION AND IMPROVEMENT PROJECT TO BE HANDLED BY THE BUREAU OF TELECOMMUNICATIONS AND TO GUARANTEE THE SAME FOR AND ON BEHALF OF THE REPUBLIC OF THE PHILIPPINES, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The President of the Philippines is hereby authorized to negotiate and contract with the Export and Import Bank of Tokyo, Japan, or with any other foreign financial institutions or foreign manufacturing corporations

or their duly authorized agents, in the name and on behalf of the Republic of the Philippines, one or several loans not to exceed twelve million dollars for the purpose of financing a nationwide telecommunications expansion and improvement project of the Republic of the Philippines.

SEC. 2. The President of the Philippines is hereby further authorized to guarantee, absolutely and unconditionally, as primary obligor and not as surety merely, in the name and on behalf of the Republic of the Philippines, the payment of the loan or loans herein authorized as well as the performance of all or any of the obligations undertaken by the Republic of the Philippines in the territory of said Republic pursuant to loan agreements entered into with the Export and Import Bank of Tokyo, Japan, or with any other foreign financial institutions or foreign manufacturing corporations or their duly authorized agents, for the implementation of the nationwide telecommunications expansion and improvement project provided for in this Act.

SEC. 3. Pursuant to the authority granted under sections one and two of this Act, the President of the Philippines is empowered to enter into agreements with the Export and Import Bank of Tokyo, Japan, or with any other foreign financial institutions or foreign manufacturing corporations or their duly authorized agents, on such terms and conditions as he shall deem proper to effectuate the purposes of this Act.

SEC. 4. The total principal amount of loans contracted or guaranteed by the Republic of the Philippines pursuant to the provisions of this Act shall not exceed the sum of twelve million dollars in currency of the United States of America, or its equivalent in other countries.

SEC. 5. There is hereby created a committee with the Deputy Auditor General as chairman, and the Deputy Commissioner of the Budget, the Director of the Bureau of Telecommunications, the Secretary of the General Services and the Chairman of the National Power Board, as members, which shall make a canvass of the prices of the telecommunications equipments required in this Act and to recommend for approval by the President the procurement by public bidding of only such equipments as the prices and quality thereof are most favorable to the government: *Provided,* That in case of public bidding, such bidding shall be done in the Philippines.

SEC. 6. Any agreement entered into pursuant to the provisions of this Act may provide that such agreement, and all payments made pursuant thereto, shall be exempt from all taxes, contributions and restrictions of the Republic of the Philippines, its provinces, cities and municipalities.

SEC. 7. Any such loan or loans, shall be exempt from taxes, duties, fees, imposts, charges, contributions and restrictions of the Republic of the Philippines, its provinces, cities and municipalities.

SEC. 8. Telecommunications equipment and accessories of the latest model and brand new procured and imported under this Act shall be exempt from all taxes, duties, fees, imposts, charges, contributions and restrictions of the

Republic of the Philippines, its provinces, cities and municipalities.

SEC. 9. The Bureau of Telecommunications shall handle the execution of the nationwide telecommunications expansion and improvement project provided for in this Act and shall be responsible for its subsequent operation: *Provided,* That the projects in the municipalities and barrios shall be installed with the consent of the municipal council and barrio council concerned.

SEC. 10. The funds needed by the Bureau of Telecommunications as peso counterpart fund for the nationwide telecommunications expansion and improvement project provided for in this Act shall be taken from economic development bonds issued under Republic Act Numbered One thousand and from other fund sources of the Republic of the Philippines.

SEC. 11. This Act shall take effect upon its approval.

Approved, July 20, 1959.

S. No. 368

[REPUBLIC ACT NO. 2613]

AN ACT TO AMEND CERTAIN SECTIONS OF REPUBLIC ACT NUMBERED TWO HUNDRED AND NINETY-SIX, OTHERWISE KNOWN AS "THE JUDICIARY ACT OF 1948", AS AMENDED.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section six of Republic Act Numbered Two hundred and ninety-six, as amended, is hereby amended to read as follows:

"SEC. 6. *Disposition of moneys paid into court.*—All moneys accruing to the Government in the Supreme Court, in the Court of Appeals, and in the Court of First Instance, including fees, fines, forfeitures, costs, or other miscellaneous receipts, and all trust or depository funds paid into such courts shall be received by the corresponding clerk of court and, in the absence of special provision, shall be paid by him into the National Treasury to the credit of the proper account or fund and under such regulations as shall be prescribed by the Auditor General: *Provided, however,* That twenty per cent of all fees collected shall be set aside as a special fund for the compensation of attorneys *de oficio* as may be provided for in the rules of court.

"A clerk shall not receive money belonging to private parties except where the same is paid to him or into court by authority of law."

SEC. 2. Subparagraph five of paragraph three of section seventeen of the same Act is hereby amended to read as follows:

"(5) All civil cases in which the value in controversy exceeds two hundred thousand pesos, exclusive of interest and costs, or in which the title or possession of real estate exceeding in value the sum of two hundred thousand pesos to be ascertained by the oath of a party to the cause or by other competent evidence, is involved or brought in

question. The Supreme Court shall likewise have exclusive jurisdiction over all appeals in civil cases, even though the value in controversy, exclusive of interest and costs, is two hundred thousand pesos or less, when the evidence involved in said cases is the same as the evidence submitted in an appealed civil case within the exclusive jurisdiction of the Supreme Court as provided herein".

SEC. 3. Section forty-four, paragraph (c), of the same Act is hereby amended to read as follows:

"SEC. 44. *Original jurisdiction.*—Courts of First Instance shall have original jurisdiction:

* * * * * * *

"(*c*) In all cases in which the demand, exclusive of interest, or the value of the property in controversy, amounts to more than five thousand pesos;"

SEC. 4. Section forty-five of the same Act is hereby amended to read as follows:

"SEC. 45. *Appellate Jurisdiction.*—Courts of First Instance shall have appellate jurisdiction over all cases arising in municipal and justice of the peace courts, in their respective provinces, except over appeals from cases tried by justices of the peace of provincial capitals or municipal judges pursuant to the authority granted under the last paragraph of Section eighty-seven of this Act."

SEC. 5. Section forty-nine of the same Act, as amended, is hereby further amended to read as follows:

"SEC. 49. *Judicial districts.*—Judicial districts for Courts of First Instance in the Philippines are constituted as follows:

"The First Judicial District shall consist of the Provinces of Cagayan, Batanes, Isabela, and Nueva Vizcaya.

"The Second Judicial District, of the Provinces of Ilocos Norte, Ilocos Sur, Abra, City of Baguio, Mountain Province, and La Union;

"The Third Judicial District, of the Provinces of Pangasinan and Zambales, and the City of Dagupan;

"The Fourth Judicial District, of the Provinces of Nueva Ecija and Tarlac, and Cabanatuan City;

"The Fifth Judicial District, of the Provinces of Pampanga, Bataan and Bulacan;

"The Sixth Judicial District, of the City of Manila;

"The Seventh Judicial District, of the Province of Rizal, Quezon City and Pasay City, the Province of Cavite, City of Cavite, the City of Tagaytay, Trece Martires City and the Province of Palawan;

"The Eighth Judicial District, of the Province of Laguna, the City of San Pablo, the Province of Batangas, the City of Lipa, and Provinces of Oriental Mindoro and Occidental Mindoro;

"The Ninth Judicial District, of the Provinces of Quezon and Camarines Norte;

"The Tenth Judicial District, of the Province of Camarines Sur, Naga City, and the Provinces of Albay, Catanduanes, Sorsogon and Masbate;

"The Eleventh Judicial District, of the Province of Capiz, Roxas City, the Provinces of Aklan, Romblon, Marinduque and Iloilo, the City of Iloilo, and the Province of Antique;

"The Twelfth Judicial District, of the Province of Occidental Negros, the Cities of Bacolod and Silay, the Province of Oriental Negros, Dumaguete City, and the subprovince of Siquijor;

"The Thirteenth Judicial District, of the Province of Samar, the City of Calbayog, the Province of Leyte, and the Cities of Ormoc and Tacloban;

"The Fourteenth Judicial District, of the Province of Cebu, the City of Cebu and the Province of Bohol;

"The Fifteenth Judicial District, of the Provinces of Surigao and Agusan, Butuan City, the Province of Oriental Misamis, Cagayan de Oro City, the Provinces of Bukidnon and Lanao and the Cities of Iligan and Marawi; and

"The Sixteenth Judicial District, of the Province of Davao, the City of Davao, the Province of Cotabato and Occidental Misamis, Ozamiz City, the Provinces of Zamboanga del Norte and Zamboanga del Sur, Zamboanga City, Basilan City, and the Province of Sulu."

SEC. 6. Section fifty of the same Act, as amended, is hereby further amended to read as follows:

"SEC. 50. *Judge of First Instance of Judicial Districts.*— Six judges shall be commissioned for the First Judicial District. Two judges shall preside over the Courts of First Instance of Cagayan and Batanes, and shall be known as judges of the first and second branches thereof, respectively, the judge of the second branch to preside also over the Court of First Instance of Batanes; two judges shall preside over the Court of First Instance of Isabela, and shall be known as the judges of the first and second branches thereof; and two judges shall preside over the Court of First Instance of Nueva Vizcaya, to be known as judges of the first and second branches thereof.

"Eleven judges shall be commissioned for the Second Judicial District. Three judges shall preside over the Court of First Instance of Ilocos Norte; three judges shall preside over the Court of First Instance of Ilocos Sur; one judge shall preside over the Court of First Instance of Abra; one judge shall preside over the Court of First Instance of the City of Baguio and the Subprovince of Benguet; two judges shall preside over the Court of First Instance of La Union and shall be known as judges of the First and second branches thereof, respectively; one judge shall preside over the Court of First Instance of Mountain Province with jurisdiction covering the whole of Mountain Province, except the City of Baguio and the Subprovince of Benguet.

"Eleven judges shall be commissioned for the Third Judicial District. Nine judges shall preside over the Court of First Instance of Pangasinan and shall be known as judges of the first, second, third, fourth, fifth, sixth, seventh, eighth and ninth branches thereof, respectively. Two judges shall preside over the Court of First Instance of Zambales, and shall be known as judges of the first and second branches thereof, respectively.

"Five judges shall be commissioned for the Fourth Judicial District. Three judges shall preside over the Court of First Instance of Nueva Ecija and Cabanatuan City and shall be known as judges of the first, second, and third branches thereof, respectively; and two judges shall preside

over the Court of First Instance of Tarlac, and shall be known as judges of the first and second branches thereof, respectively.

"Seven judges shall be commissioned for the Fifth Judicial District. Three judges shall preside over the Court of First Instance of Pampanga and shall be known as judges of the first, second and third branches thereof, respectively; one judge shall preside over the Court of First Instance of Bataan; and three judges shall preside over the Court of First Instance of Bulacan and shall be known as judges of the first, second and third branches thereof, respectively.

"Twenty-two judges shall be commissioned for the Sixth Judicial District. They shall preside over the Court of First Instance of Manila and shall be known as judges of the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first and twenty-second branches thereof, respectively.

"Thirteen judges shall be commissioned for the Seventh Judicial District. Nine judges shall preside over the Courts of First Instance of the Province of Rizal, Quezon City, and Pasay City and shall be known as judges of the first, second, third, fourth, fifth, sixth, seventh, eighth and ninth branches thereof, respectively; three judges shall preside over the Courts of First Instance of the Province of Cavite and the Cities of Cavite, Tagaytay, and Trece Martires, and shall be known as judges of the first, second, and third branches thereof, respectively; and one judge shall preside over the Court of First Instance of Palawan.

"Eight judges shall be commissioned for the Eighth Judicial District. Four judges shall preside over the Courts of First Instance of Laguna and the City of San Pablo, and shall be known as judges of the first, second, third and fourth branches thereof, respectively; three judges shall preside over the Courts of First Instance of Batangas and the City of Lipa, and shall be known as judges of the first, second and third branches thereof, respectively; and one judge shall preside over the Courts of First Instance of Mindoro Oriental and Mindoro Occidental.

"Five judges shall be commissioned for the Ninth Judicial District. Four judges shall preside over the Court of First Instance of Quezon and shall be known as judges of the first, second, third and fourth branches thereof, respectively; and one judge shall preside over the Court of First Instance of Camarines Norte.

"Twelve judges shall be commissioned for the Tenth Judicial District. Five judges shall preside over the Courts of First Instance of Camarines Sur and Naga City and shall be known as judges of the first, second, third, fourth and fifth branches thereof, respectively; three judges shall preside over the Court of First Instance of Albay and shall be known as judges of the first, second and third branches thereof; one judge shall preside over the Court of First Instance of Catanduanes; two judges shall preside over the Court of First Instance of the Province of Sorsogon; and one judge shall preside over the Court of First Instance of Masbate.

"Twelve judges shall be commissioned for the Eleventh Judicial District. Two judges shall preside over the Courts of First Instance of Capiz and Roxas City and shall be known as judges of the first and second branches thereof, respectively; one judge shall preside over the Court of First Instance of the Province of Romblon; one judge shall preside over the Court of First Instance of Marinduque; one judge shall preside over the Court of First Instance of the Province of Aklan; six judges shall preside over the Courts of First Instance of the Province of Iloilo and the City of Iloilo and shall be known as judges of the first, second, third, fourth, fifth and sixth branches thereof respectively; and one judge shall preside over the Court of First Instance of the Province of Antique.

"Seven judges shall be commissioned for the Twelfth Judicial District. Five judges shall preside over the Court of First Instance of Occidental Negros and the Cities of Bacolod and Silay and shall be known as judges of the first, second, third, fourth, and fifth branches thereof, respectively; and two judges shall preside over the Courts of First Instance of Oriental Negros, Dumaguete City, and the Subprovince of Siquijor.

"Thirteen judges shall be commissioned for the Thirteenth Judicial District. Six judges shall preside over the Court of First Instance of Samar and Calbayog City and shall be known as judges of the first, second, third, fourth, fifth and sixth branches thereof, respectively; and seven judges shall preside over the Courts of First Instance of Leyte and the cities of Ormoc and Tacloban, and shall be known as judges of the first, second, third, fourth, fifth, sixth and seventh branches thereof, respectively.

"Eleven judges shall be commissioned for the Fourteenth Judicial District. Eight judges shall preside over the Court of First Instance of the Province of Cebu and the City of Cebu, and shall be known as judges of the first, second, third, fourth, fifth, sixth, seventh and eighth branches thereof, respectively; and three judges shall preside over the Court of First Instance of Bohol.

"Nine judges shall be commissioned for the Fifteenth Judicial District. Two judges shall preside over the Court of First Instance of Surigao; one judge shall preside over the Court of First Instance of Agusan and Butuan City; four judges shall preside over the Court of First Instance of Oriental Misamis, Cagayan de Oro and Bukidnon, and shall be known as judges of the first, second, third and fourth branches thereof, respectively; and two judges shall preside over the Court of First Instance of Lanao and the Cities of Marawi and Iligan, and shall be known as judges of the first and second branches thereof.

"Thirteen judges shall be commissioned for the Sixteenth Judicial District. Three judges shall preside over the Courts of First Instance of the Province of Davao and Davao City to be known as judges of the first, second and third branches thereof; three judges shall preside over the Court of First Instance of Cotabato, to be known as judges of the first, second and third branches thereof; one judge shall preside over the Court of First Instance of Occidental Misamis and Ozamiz City; two judges shall

preside over the Court of First Instance of Zamboanga del Norte to be known as judges of the first and second branches thereof; one judge shall preside over the Court of First Instance of Zamboanga del Sur; one judge shall preside over the Court of First Instance of Zamboanga City and Basilan City; and two judges shall preside over the Court of First Instance of Sulu, to be known as judges of the first and second branches thereof."

SEC. 7. Section fifty-two of the same Act, as amended, is hereby further amended to read as follows:

"SEC. 52. *Permanent stations of district judges.*—The permanent station of judges of the Sixth Judicial District shall be in the City of Manila.

"In other judicial districts, the permanent stations of the judges shall be as follows:

"For the First Judicial District, the judge of the first branch of the Court of First Instance of Cagayan and Batanes shall be stationed in the Municipality of Tuguegarao, Province of Cagayan, the judge of the second branch, in the Municipality of Aparri, same province; one judge shall be stationed in the Municipality of Ilagan, Province of Isabela; one judge shall be stationed at Cauayan, same province and two judges, in the Municipality of Bayombong, Province of Nueva Vizcaya.

"For the Second Judicial District, three judges shall be stationed in the Municipality of Laoag, Province of Ilocos Norte; three judges in the Municipality of Vigan, Province of Ilocos Sur; one judge in the City of Baguio; one judge in the Municipality of Bangued, Province of Abra; two judges, in the Municipality of San Fernando, Province of La Union; and one judge in the municipality of Bontoc, Subprovince of Bontoc.

"For the Third Judicial District, two judges shall be stationed in the Municipality of Lingayen, Province of Pangasinan; three judges shall be stationed in the City of Dagupan; two judges, in the Municipality of Urdaneta, Province of Pangasinan; one judge, in the Municipality of Tayug, and another in the Municipality of Alaminos, same province; and two judges, in the Municipality of Iba, Province of Zambales.

"For the Fourth Judicial District, three judges shall be stationed in the City of Cabanatuan, and two judges in the Municipality of Tarlac, Province of Tarlac.

"For the Fifth Judicial District, two judges shall be stationed in the Municipality of San Fernando, Province of Pampanga; and one judge shall be stationed in the Municipality of Guagua, Province of Pampanga; one judge in the Municipality of Balanga, Province of Bataan; three judges, in the Municipality of Malolos, Province of Bulacan.

"For the Seventh Judicial District, four judges shall be stationed in the Municipality of Pasig, Province of Rizal; two judges shall be stationed in Pasay City; and three judges in Quezon City; one judge, in the Municipality of Puerto Princesa, Province of Palawan; and three judges, in the City of Cavite: *Provided,* That one of the judges of the three branches thereof shall be stationed in the City of Trece Martires.

"For the Eighth Judicial District, one judge shall be stationed in the Municipality of Biñan, Province of Laguna; two judges shall be stationed in the Municipality of Santa Cruz, same province, and one judge, in the City of San Pablo; the judge of the first branch of the Court of First Instance of Batangas shall be stationed in the Municipality of Batangas, Province of Batangas; and those of the second and third branches, in the City of Lipa and the Municipality of Balayan, Province of Batangas, respectively; and one judge, in the Municipality of Calapan, Province of Mindoro Oriental.

"For the Ninth Judicial District, two judges shall be stationed in the Municipality of Lucena, Province of Quezon; one judge shall be stationed in the Municipality of Gumaca, in the same province; one judge in the Municipality of Infanta in the same province; and one judge in the Municipality of Daet, Province of Camarines Norte.

"For the Tenth Judicial District, three judges shall be stationed in the City of Naga; one judge each shall be stationed in the Municipalities of Tigaon and Libmanan, Province of Camarines Sur; three judges, in the City of Legaspi, Province of Albay; one judge in the Municipality of Virac, Province of Catanduanes; one judge each in the Municipalities of Sorsogon and Gubat, Province of Sorsogon; and one judge, in the Municipality of Masbate, Province of Masbate.

"For the Eleventh Judicial District, two judges shall be stationed in Roxas City; one judge, in the Municipality of Romblon, Romblon; one judge in the Municipality of Boac, Marinduque; and one judge, in the Municipality of Kalibo, Province of Aklan; six judges in the City of Iloilo; and one judge, in the Municipality of San Jose de Buenavista, Province of Antique.

"For the Twelfth Judicial District, four judges shall be stationed in the City of Bacolod, one judge in the City of Silay; and two judges, in the City of Dumaguete.

"For the Thirteenth Judicial District, one judge shall be stationed in the Municipality of Catbalogan, Province of Samar; one judge in the Municipality of Borongan, same province; one judge in the Municipality Laoang, same province; one judge in the Municipality of Catarman, same province; one judge in the City of Calbayog; and one judge in the Municipality of Guiuan, same province; three judges shall be stationed in the City of Tacloban; one judge in the Municipality of Maasin, Province of Leyte; one judge in the City of Ormoc; one judge in the Municipality of Carigara, Leyte; and one judge in the subprovince of Biliran, at Naval, Leyte.

"For the Fourteenth Judicial District, six judges shall be stationed in the City of Cebu; one judge each shall be stationed in the Municipalities of Barili and Bogo, Province of Cebu; two judges in the Municipality of Tagbilaran, Province of Bohol; and one judge in the Municipality of Talibon, same province.

"For the Fifteenth Judicial District, two judges shall be stationed in the Municipality of Surigao, Province of Surigao; one judge shall be stationed in the City of Cagayan de Oro; one judge in the Municipality of Ma-

laybalay, Province of Bukidnon; one judge in the Municipality of Medina, Misamis Oriental; and one judge shall be stationed in the Municipality of Catarman, Camiguin Island, subject to call for service by the Secretary of Justice at Cagayan de Oro City; one judge shall be stationed in the City of Marawi, one judge in the City of Iligan; and one judge in the City of Butuan.

"For the Sixteenth Judicial District, three judges shall be stationed in the City of Davao; two judges shall be stationed in the City of Cotabato; one judge shall be stationed in the Municipality of General Santos, Province of Cotabato; one judge shall be stationed in the Municipality of Oroquieta, Province of Occidental Misamis; two judges in the Municipality of Dipolog, Province of Zamboanga del Norte, any one of whom shall be subject to call for service at Oroquieta, Misamis Occidental by the Secretary of Justice; one judge in the Municipality of Pagadian, Province of Zamboanga del Sur; one judge in the City of Zamboanga; one judge in the Municipality of Jolo, province of Sulu; and one judge in the Municipality of Siasi, same province."

SEC. 8. Section fifty-four of the same Act, as amended, is hereby further amended to read as follows:

"SEC. 54. *Places and time of holding court.*—For the Sixth Judicial District, court shall be held in the City of Manila. In other districts, court shall be held at the capitals or places in which the respective judges are permanently stationed, except as herein provided. Sessions of court shall be convened on all working days when there are cases ready for trial or other court business to be dispatched.

"In the following districts, court shall also be held at the places and times hereinbelow specified:

"First Judicial District: At Santo Domingo de Basco, Province of Batanes, on the first Tuesday of March of each year. A special term of court shall also be held once a year in the municipalities of Ballesteros and Tuao, both of the Province of Cagayan.

"Second Judicial District: Whenever the interest of justice so requires, a special term of court shall be held at Lubuagan, Sub-province of Kalinga.

"Seventh Judicial District: At Coron and Cuyo, Province of Palawan, at least twice a year in each place on the dates to be fixed by the District Judge or as the interest of justice may require; and at Brooke's Point, same Province, at least once a year on dates to be fixed by the District Judge or as the interest of justice may require.

"Eighth Judicial District: The judge shall hold special term at the Municipalities of Lubang, Mamburao and San Jose, Mindoro Occidental; Pinamalayan and Roxas, Mindoro Oriental, once every year, as may be determined by him.

"Eleventh Judicial District: At Culasi, Province of Antique, on the first Tuesday of December of each year; and at Mambusao, Province of Capiz, a special term of Court shall be held at least once a year on dates to be fixed by the District Judge.

"Twelfth Judicial District: At Larena, Subprovince of Siquijor, on the first Tuesday of August of each year.

"Thirteenth Judicial District: The Calbayog branch to hold court at Basey, Samar, on the first Tuesday of January of each year; the Borongan branch, at Oras, same province, on the first Tuesday of July of each year; the Laoang branch, at Gamay, same province, on the first Tuesday of July of each year; and the Catarman branch, at Allen, same province, on the first Tuesday of July of each year.

"Fifteenth Judicial District: one branch to hold court at Cantilan, Province of Surigao, on the first Tuesday of August of each year; and a special term of court shall also be held by the other branch once a year in either the municipality of Tandag or the Municipality of Hinatuan, Province of Surigao, in the discretion of the district judge; the Catarman branch to hold court at Mambajao, Province of Oriental Misamis, on the last Tuesday of March of each year. A special term of court may, likewise, be held once a year by any of the judges of the province of Misamis Oriental and Cagayan de Oro City either in the Municipality of Talisayan or in the Municipality of Gingoog, Province of Oriental Misamis, in the discretion of the Secretary of Justice. Special terms of court shall be held at any time of the year at the Municipalities of Baroy and Malabang, Province of Lanao.

"Sixteenth Judicial District: Terms of court shall be held in the Municipality of Sindangan, Province of Zamboanga del Norte, on the dates to be fixed by any of the district judges; at the City of Basilan, at least four times a year on dates to be fixed by the judge sitting at Zamboanga City; and at Banganga and Mati, Province of Davao, terms of court shall be held at least once a year on dates to be fixed by any of the district judges. Terms of court shall be held in any municipality in the Province of Sulu whenever the interest of justice so requires."

SEC. 9. Section seventy-one of the same Act is hereby amended to read as follows:

"SEC. 71. *Qualifications for the office of Justice of the Peace.*—No person shall be eligible for appointment as justice of the peace or auxiliary justice of the peace unless he is (1) at least twenty-five years of age; (2) a citizen of the Philippines; (3) of good moral character and has not been convicted of any felony; (4) has been admitted by the Supreme Court to the practice of law; and (5) has practiced law in the Philippines for a period of not less than three years or has held during a like period, within the Philippines, an office requiring admission to the practice of law in the Philippines as an indispensable requisite."

SEC. 10. Sections eighty-seven and eighty-eight of the same Act are hereby amended to read as follows:

"SEC. 87. *Original jurisdiction to try criminal cases.*—Justices of the peace and judges of municipal courts of chartered cities shall have original jurisdiction over:

"(*a*) All violations of municipal or city ordinances committed within their respective territorial jurisdiction;

"(*b*) All criminal cases arising under the laws relating to:

"(1) Gambling and management or operation of lotteries;

"(2) Assaults where the intent to kill is not charged or evident upon the trial;

"(3) Larceny, embezzlement and estafa where the amount of money or property stolen, embezzled, or otherwise involved, does not exceed the sum or value of two hundred pesos;

"(4) Sale of intoxicating liquors;

"(5) Falsely impersonating an officer;

"(6) Malicious mischief;

"(7) Trespass on government or private property;

"(8) Threatening to take human life; and

"(9) Illegal possession of firearms.

"(c) All other offenses except violation of election laws in which the penalty provided by law is imprisonment for not more than six months, or a fine of not more than two hundred pesos, or both such fine and imprisonment;

"Said justices of the peace and judges of municipal courts may also conduct preliminary investigations for any offense alleged to have been committed within their respective municipalities and cities, without regard to the limits of punishment, and may release, or commit and bind over any person charged with such offense to secure his appearance before the proper court.

"Justices of the peace in the capitals of provinces and Judges of Municipal Courts shall have like jurisdiction as the Court of First Instance to try parties charged with an offense committed within the province in which the penalty provided by law does not exceed *prisión correcional* or imprisonment for not more than six years or fine not exceeding three thousand pesos or both, and in the absence of the district judge, shall have like jurisdiction within the province as the Court of First Instance to hear application for bail.

"All cases filed under the next preceding paragraph with Justices of the Peace of capitals and municipal court judges shall be tried and decided on the merits by the respective justices of the peace or municipal judges. Proceedings had shall be recorded and decisions therein shall be appealable direct to the Court of Appeals or the Supreme Court, as the case may be."

"SEC. 88. *Original jurisdiction in civil cases.*—In all civil actions, including those mentioned in Rules fifty-nine and sixty-two of the Rules of Court, arising in his municipality or city, and not exclusively cognizable by the Court of First Instance, the justice of the peace and the judge of a municipal court shall have exclusive original jurisdiction where the value of the subject-matter or amount of the demand does not exceed five thousand pesos, exclusive of interests and costs. Where there are several claims or causes of action between the same parties embodied in the same complaint, the amount of the demand shall be the totality of the demand in all the causes of action, irrespective of whether the causes of action arose out of the same or different transactions;

but where the claims or causes of action joined in a single complaint are separately owned by or due to different parties, each separate claim shall furnish the jurisdictional test. In forcible entry and detainer proceedings, the justice of the peace or judge of the municipal court shall have original jurisdiction, but the said justice or judge may receive evidence upon the question of title therein, whatever may be the value of the property, solely for the purpose of determining the character and extent of possession and damages for detention. In forcible entry proceedings, he may grant preliminary injunctions, in accordance with the provisions of the Rules of Court, to prevent the defendant from committing further acts of dispossession against the plaintiff.

"The jurisdiction of a justice of the peace and judge of a municipal court shall not extend to civil actions in which the subject of litigation is not capable of pecuniary estimation, except in forcible entry and detainer cases; nor to those which involve the legality of any tax, impost, or assessment; nor to actions involving admiralty or maritime jurisdiction; nor to matters of probate, the appointment of guardians, trustees or receivers; nor to action for annulment of marriages: *Provided, however,* That justices of the peace may, with the approval of the Secretary of Justice, be assigned by the respective district judge in each case to hear and determine cadastral or land registration cases covering lots where there is no controversy or opposition, or contested lots the value of which does not exceed five thousand pesos, such value to be ascertained by the affidavit of the claimant or by agreement of the respective claimants, if there are more than one, or from the corresponding tax declaration of real property.

"Justices of the peace in the capitals of provinces and subprovinces and also municipal judges of chartered cities, in the absence of the District Judge from the province may exercise within the province like interlocutory jurisdiction as the Court of First Instance, which shall be held to include the hearing of all motions for the appointments of a receiver, for temporary injunctions, and for all other orders of the court which are not final in their character and do not involve a decision of the case on its merits, and the hearing of petitions for a writ of habeas corpus."

SEC. 11. The first paragraph of section sixty-eight of the same Act is hereby amended to read as follows:

"SEC. 68. *Appointment and distribution of justices of the peace.*—There shall be one justice of the peace and one auxiliary justice of the peace in each municipality and municipal district, and if the public interest shall so require, in any minor political division or unorganized territory in the Philippines, and such Judges of Municipal Courts in each chartered city as their respective charters provide: *Provided,* That in addition to the present number of municipal judges in the City of Manila and Quezon City as provided for in their respective charters, there shall be two additional municipal judges for the City of Manila and one additional municipal judge for Quezon City, who shall have jurisdiction, assignment and com-

pensation provided for in the charter of their respective cities.

SEC. 12. There is hereby appropriated, out of any funds in the National Treasury not otherwise appropriated, such sum as may be necessary to carry out the purpose of this Act.

SEC. 13. This Act shall take effect upon its approval.

Approved, August 1, 1959.

S. No. 380

[REPUBLIC ACT NO. 2614]

AN ACT TO AMEND SECTIONS ONE, TWO, THREE, FOUR, FIVE AND SIX OF REPUBLIC ACT NUMBERED NINE HUNDRED AND TEN AS AMENDED BY REPUBLIC ACT NUMBERED ONE THOUSAND FIFTY-SEVEN, ENTITLED "AN ACT TO PROVIDE FOR THE RETIREMENT OF JUSTICES OF THE SUPREME COURT AND OF THE COURT OF APPEALS, FOR ENFORCEMENT OF THE PROVISIONS HEREOF BY THE GOVERNMENT SERVICE INSURANCE SYSTEM, AND TO REPEAL COMMONWEALTH ACT NUMBERED FIVE HUNDRED AND THIRTY-SIX," TO MAKE ITS PROVISIONS APPLICABLE TO JUDGES OF THE COURTS OF AGRAGIAN RELATIONS, INDUSTRIAL RELATIONS, TAX APPEALS, FIRST INSTANCE, AND JUVENILE AND DOMESTIC RELATIONS COURTS, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Sections one, two, three, four, five and six of Republic Act Numbered Nine Hundred Ten are hereby amended to read as follows:

"SECTION 1. When a Justice of the Supreme Court or of the Court of Appeals or a Judge of the Courts of First Instance, Industrial Relations, Agrarian Relations, Tax Appeals or Juvenile and Domestic Relations who has rendered at least twenty years' service, either in the judiciary or in any other branch of the Government, or in both, (*a*) retires for having attained the age of seventy years, or (*b*) resigns by reason of his incapacity to discharge the duties of his office, he shall receive during the residue of his natural life, in the manner hereinafter provided, the salary which he was receiving at the time of his retirement or resignation. And when a Justice of the Supreme Court or of the Court of Appeals or a Judge of the Court of First Instance, Industrial Relations, Agrarian Relations, Tax Appeals or Juvenile and Domestic Relations has attained the age of sixty-five years and has rendered at least twenty years' service in the Government, fifteen or more of which have been continuously rendered as such, he shall likewise be entitled to retire and receive during the residue of his natural life, in the manner also hereinafter prescribed, the salary which he was then receiving. It is a condition of the pension pro-

vided for herein that no retiring Justice or Judge of a Court of Record during the time that he is receiving said pension shall appear as counsel before any court in any civil case wherein the Government or any subdivision or instrumentality thereof is the adverse party, or in any criminal case wherein an officer or employee of the Government is accused of an offense committed in relation to his Office, or collect any fee for his appearance in any administrative proceedings to maintain an interest adverse to the Government, national, provincial, or municipal, or to any of its legally constituted officers. It is also a condition of the pension provided for herein that when a member of the judiciary entitled to the benefits of this Act shall return to public elective office, he shall not, upon assumption of office and during his term, receive the monthly pension due him."

"SEC. 2. In case a Justice of the Supreme Court or of the Court of Appeals dies while in actual service, his heirs shall receive a lump sum equivalent to five years salary based upon the salary that said Justice was receiving at the time of his demise, if by reason of his length of service in the government he was already entitled to the benefits of this Act; and as to a Judge of the Court of First Instance, Industrial Relations, Agrarian Relations, Tax Appeals, or Juvenile and Domestic Relations who dies in actual service before he shall have attained the age of seventy years, the lump sum allowable for death benefit shall be only for three years based on the decedent's last salary which shall be payable to his heirs in three equal annual installments, otherwise his heirs shall only receive a lump sum equivalent to his last salary for two years payable in two equal annual installments in addition to a reimbursement of all premiums that he may have paid under this Act. The same benefits provided in this section shall be extended according to the foregoing schedule to any incumbent Justice of the Supreme Court or of the Court of Appeals or a Judge of the Court of First Instance, Industrial Relations, Agrarian Relations, Tax Appeals, or Juvenile and Domestic Relations, as the case may be, who, without having attained the length of service required in Section one hereof shall have to retire upon reaching the age of seventy years, or for other causes, such as illness, to be certified to by the tribunal to which the Justice concerned belongs, or by the Secretary of Justice in case of an incumbent Judge of the Court of First Instance and other similar Courts of Record, which render him incapacitated to continue in his position."

"SEC. 3. Upon retirement, a Justice of the Supreme Court or of the Court of Appeals shall be automatically entitled to a lump sum payment of five years salary based upon the last annual salary that said Justice was receiving at the time of his retirement: *Provided,* That, as to ax Judge of the Court of First Instance, Industrial Relations, Agrarian Relations, Tax Appeals, or Juvenile and Domestic Relations, the lump sum payment shall be for three years salary based upon the last annual salary, and thereafter upon survival after the expiration of this period of five or three years, as the case may be, to a further annuity payable monthly during the residue of his natural

life equivalent to the amount of the monthly salary he was receiving on the date of his retirement."

"SEC. 4. A retiring Justice or Judge who is entitled to the benefits of any prior retirement gratuity Act shall have the option to choose between the benefits in such Act and those herein provided for, and in such case he shall be entitled only to the benefits so chosen: *Provided, however*, That a Justice or Judge retired under any prior Act and who is thereafter appointed to the Supreme Court or to the Court of Appeals or to the Court of First Instance, Industrial Relations, Agrarian Relations, Tax Appeals, or Juvenile and Domestic Relations, as the case may be, shall be entitled to the benefits of this Act on condition that, in case he has not fully refunded to the Government the gratuity previously received by him, there shall be deducted from the amount payable to him under this Act such monthly installments as are required in section six of Act Numbered Four thousand and fifty-one, as amended, until the gratuity already received by him shall have been refunded in full."

"SEC. 5. The Government Service Insurance System shall take charge of the enforcement and operation of this Act, and no Justice of the Supreme Court or of the Court of Appeals, Judge of the Court of First Instance, Industrial Relations, Agrarian Relations, Tax Appeals, or Juvenile and Domestic Relations shall be entitled to receive any gratuity or pension herein provided unless from the month following the approval of this Act, in case of an actual incumbent, or from the month following his appointment and qualification as such, in case of future appointment, he shall have contributed to the funds of the System by paying a monthly premium of one hundred pesos, which fund shall also be made available for the payment of the benefits of this Act."

"SEC. 6. Commonwealth Act Numbered Five hundred and thirty-six and any other provision in conflict with this Act are hereby repealed."

SEC. 2. Such sum as may be necessary to carry out the purposes of this amendatory Act is hereby appropriated out of any funds in the National Treasury not otherwise appropriated.

SEC. 3. All Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 4. This Act shall take effect upon its approval.

Approved, August 1, 1959.

H. No. 3082

[REPUBLIC ACT No. 2615]

AN ACT TO AMEND CERTAIN SECTIONS OF REPUBLIC ACT NUMBERED ONE THOUSAND ONE HUNDRED SEVENTY-NINE, ENTITLED "AN ACT TO PROVIDE FOR THE PROMOTION OF VOCATIONAL REHABILITATION OF THE BLIND AND OTHER HANDICAPPED PERSONS AND THEIR RETURN TO CIVIL EMPLOYMENT," AND TO CREATE A NATIONAL COUNCIL ON REHABILITATION.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subsection (*b*), section seven of Republic Act Numbered One thousand one hundred seventy-nine, is amended to read as follows:

"(*b*) Over-all supervision of the Pilot Adjustment and Training Center and all the regional training centers that may be established;"

SEC. 2. The second paragraph of subsection (*c*), section eight of Republic Act Numbered One thousand one hundred seventy-nine, is amended to read as follows:

"The Pilot Adjustment and Training Center and the regional training centers that may be established shall operate eight hours a day, five instruction days per week for a minimum duration of three months with individual extension possible up to a maximum of twelve months."

SEC. 3. Two new sections are inserted after section eight of Republic Act Numbered One thousand one hundred seventy-nine to read as follows:

"REGIONAL TRAINING CENTERS

"SEC. 8–A. (1) *Creation.*—To ensure that vocational rehabilitation services shall benefit the blind and other handicapped in the provinces, there shall be established, in addition to the now existing Pilot Adjustment and Training Center at Barranca, Cubao, Quezon City, according to the period hereinafter specified suitable regional adjustment and training centers for vocational rehabilitation, as follows:

"For the fiscal year nineteen hundred and sixty, Region No. 1, comprising the provinces of Ilocos Sur, Ilocos Norte, Abra, La Union, Mountain Province, Pangasinan, Zambales, Tarlac and the cities of Baguio and Dagupan, possibly in the regional headquarters at Dagupan City; and Region No. 7, comprising the Provinces of Misamis Occidental, Zamboanga del Sur, Zamboanga del Norte and Sulu and the cities of Zamboanga, Ozamis and Basilan, possibly in the regional headquarters at Zamboanga City;

"For the fiscal year nineteen hundred and sixty-one, Region No. 4, comprising the provinces of Camarines Norte, Camarines Sur, Albay, Sorsogon, Catanduanes and Masbate and the City of Naga, possibly in the regional headquarters at Naga City; and Region No. 5, comprising the provinces of Negros Occidental, Romblon, Antique, Capiz, Aklan and Iloilo and the cities of Bacolod, Roxas and Iloilo, possibly in the regional headquarters at Iloilo City;

"For the fiscal year nineteen hundred and sixty-two, Region No. 2, comprising the provinces of Cagayan, Isabela, Nueva Vizcaya and Batanes, possibly in the regional headquarters at Tuguegarao, Cagayan; and Region No. 8, comprising the provinces of Surigao, Bukidnon, Misamis Oriental, Lanao, Agusan, the cities of Davao, Butuan, Cagayan de Oro and Marawi, possibly in the regional headquarters at Cagayan de Oro City; and Region No. 9, comprising the provinces of Cotabato and Davao and the cities of Davao and Cotabato in the regional headquarters at Davao City.

"For the fiscal year nineteen hundred and sixty-three, Region No. 3, comprising the provinces of Nueva Ecija, Pam-

panga, Bulacan, Bataan, Rizal, Quezon, Cavite, Laguna, Batangas, Oriental Mindoro, Occidental Mindoro, Marinduque and Palawan and the cities of Cabanatuan, Pasay, San Pablo, Tagaytay, Cavite, Trece Martires, Lipa, Quezon and Manila, possibly in San Pablo City; and Region No. 6, comprising the provinces of Negros Oriental, Bohol, Leyte, Samar and Cebu and the cities of Cebu, Dumaguete, Calbayog, Tacloban and Ormoc, possibly in the regional headquarters at Cebu City.

"(2) The establishment of these regional adjustment and training centers shall be at the cost of at least fifty thousand pesos each and shall be patterned after that of the first pilot project now in operation. The funds for these constructions may be drawn from the fiduciary funds of the Office of Vocational Rehabilitation. And the operating expenses of all existing rehabilitation centers under the Office of Vocational Rehabilitation shall be incorporated in the General Appropriation Act to be marked as 'Special Purposes for Vocational Rehabilitation'.

"(3) The following shall compose the nucleus of the staff for such regional centers with the corresponding compensation:

"(*a*) One superintendent, at ₱3,984 *per annum*, range P43
"(*b*) One clerk, at ₱1,476 *per annum*, Range P23
"(*c*) One intake social worker, at ₱1,884 *per annum*, range P28
"(*d*) One social worker, at ₱1,884 *per annum*, range P28
"(*e*) One homebound social worker, at ₱1,884 *per annum*, range P28
"(*f*) Two vocational counselors, at ₱1,884 *per annum*, range P28
"(*g*) One part-time physician, at ₱1,800 *per annum*, range P27
"(*h*) One chief instructor, at ₱3,108 *per annum*, range P38–40
"(*i*) One Braille instructor, at ₱1,716 *per annum*, range P24–32
"(*j*) One travel technique instructor at ₱1,716 *per annum*, range P24–32
"(*k*) One craft instructor, at ₱1,716 *per annum*, range P24–32
"(*l*) One rural project instructor, at ₱1,716 *per annum*, P24–32
"(*m*) One clerk-laborer, at ₱1,152 *per annum*, range P18
"(*n*) One caretaker, at ₱1,152 *per annum*, range P18
"(*o*) One guard-driver, at ₱1,440 *per annum*, range P22

"The compensation for the staff of the regional centers shall be drawn from the fiduciary fund of the Office of Vocational Rehabilitation which are its net proceeds from the Philippine Charity Sweepstakes draw as stipulated in section ten (*b*) of Republic Act Numbered One thousand one hundred seventy-nine.

"NATIONAL COUNCIL ON REHABILITATION

"SEC. 8–B. (*a*) *Creation.*—In order to have a central body to coordinate activities relating to all phases of reha-

bilitation of handicapped persons, there is hereby established a National Council on Rehabilitation, hereinafter referred to as the Council.

"The Council shall have fifteen members composed as follows:

"The first six members shall be nominated by the heads of the following Government agencies: Department of Health; Department of Education; Department of Labor; Department of National Defense; Social Welfare Administration and the Social Security System, which shall be referred to as Group I.

"Under Group II, shall be four representatives from medical, educational, scientific and legislative fields; four representatives from civic, financial, industrial, labor organizations, and one representative from radio and press.

"All these fifteen members shall be appointed by the President to compose the National Council on Rehabilitation.

"(*b*) *Term of Office.*—Each appointed member of the Council shall hold office for a term of four years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor is appointed shall be appointed for the remainder of such term; and except that, of the members first appointed, Group I shall enjoy four years of office; members of Group II shall be appointed with three holding office for three years, another three for two years and the next three for one year as designated by the President at the time of appointment.

"None of these members shall be eligible for re-appointment until a year has elapsed after the end of his preceding term; however, the six members from Group I shall enjoy eligibility of re-appointment to ensure continuity and direction of program without the stipulated one year provision.

"(*c*) *Duties and Functions.*—It shall be the duty and function of the Council:

"(1) To formulate policies regarding rehabilitation of the handicapped in the Philippines;

"(2) To help provide proper coordination of existing rehabilitation programs so as to extend maximum services to the blind and other handicapped persons and to prevent or minimize overlapping of services;

"(3) To help determine standards and criteria for all organizations and agencies engaged in rehabilitation work, whether governmental or voluntary;

"(4) To formulate rules and regulations to implement the purposes for which the council has been established;

"(5) To initiate appropriate actions, including legal, for any violation of such rules and regulations which shall be promulgated;

"(6) To initiate research on rehabilitation;

"(7) To compile statistics on the following:

"(*aa*) Census of handicapped individuals in the Philippines in relation to number and classification;

"(*bb*) Census of rehabilitation facilities;

"(*cc*) Census of rehabilitation needs;

"(*dd*) Census of already qualified handicapped workers; and

"(*ee*) Census of employment opportunities;

"(8) To conduct and supervise campaigns to raise fund as provided for in section ten (*a*) of Republic Act Numbered one thousand one hundred seventy-nine; and

"(9) To submit annual report to Congress.

"(*d*) *Chairman.*—The fifteen members of the Council shall appoint its chairman by democratic process from among its members within fifteen days from the date of appointment while meeting *in banc.*

"(*e*) *Executive Secretary.*—The Council is also empowered to appoint an executive secretary outside of its members by a majority vote. The executive secretary shall be paid an annual compensation of five thousand four hundred pesos which shall be drawn from the fiduciary fund of the Office of Vocational Rehabilitation which are its net proceeds from the Philippine Charity Sweepstakes draw as stipulated in section ten (*b*) of Republic Act Numbered One thousand one hundred seventy-nine, and shall possess the following qualifications: At least five years experience with accepted competence in rehabilitation work, at least a four-year college course graduate and with good moral standing.

"(*f*) *Compensation of the members of the Council.*—The members of the Council which shall meet at least six (6) times a year shall receive no compensation, but shall be entitled to an honorarium not exceeding twenty-five pesos per meeting; and shall also be entitled to receive an allowance for actual and necessary traveling and subsistence expenses while so serving away from their places of business."

SEC. 4. This Act shall take effect upon its approval.

Approved, August 1, 1959.

H. No. 3570

[REPUBLIC ACT NO. 2616]

AN ACT PROVIDING FOR THE EXPROPRIATION OF THE TATALON ESTATE IN QUEZON CITY AND FOR THE SALE, AT COST, OF THE LOTS THEREIN TO THEIR PRESENT *BONA FIDE* OCCUPANTS, AND AUTHORIZING THE APPROPRIATION OF TEN MILLION PESOS FOR THE PURPOSE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The expropriation of the Tatalon Estate in Quezon City jointly owned by the J. M. Tuazon and Company, Inc., Gregorio Araneta and Company, Inc., and Florencio Deudor, et al., is hereby authorized.

SEC. 2. Immediately upon the appropriation of funds by the Congress of the Philippines for the payment of just compensation for the said Tatalon Estate, the Solicitor General, or any other proper Government authority shall institute the necessary expropriation proceedings before the Court of First Instance of Quezon City.

SEC. 3. After the expropriation of the Tatalon Estate as provided in this Act, the lots therein shall be sold at

cost to their present *bona fide* occupants in not more than two hundred forty equal monthly installments with interest of not more than six *per centum per annum* on the unpaid balance.

SEC. 4. After the expropriation proceedings mentioned in section two of this Act shall have been initiated and during the pendency of the same, no ejectment proceedings shall be instituted or prosecuted against the present occupant of any lot in said Tatalon Estate, and no ejectment proceedings already commenced shall be continued, and such lot or any portion thereof shall not be sold by the owners of said estate to any person other than the present occupant without the consent of the latter given in a public instrument.

SEC. 5. Any owner, manager, agent, or other representative of the owners of said estate who shall violate the provisions of the preceding section shall be liable for exemplary damages equivalent to the amount of actual damages suffered by the prejudiced occupant, and for attorney's fees and expenses of litigation.

SEC. 6. No person acquiring by virtue of this Act any lot in the Tatalon Estate shall sell, transfer, mortgage or otherwise dispose of said lot or any portion thereof within five years from the date full ownership of such lot has been vested in him, without the consent of the Secretary of Agriculture and Natural Resources.

SEC. 7. The amount of ten million pesos is hereby authorized to be appropriated for the purposes of this Act, without prejudice to any other method of raising the necessary funds required for the expropriation herein provided, which the President of the Philippines may determine, including the use of proceeds of Government bonds and proceeds from the Japanese reparations.

SEC. 8. This Act shall take effect upon its approval.

Enacted without Executive approval, August 3, 1959.

DEPARTMENT AND BUREAU ADMINISTRATIVE ORDERS AND REGULATIONS

Department of Commerce and Industry

COMMERCE ADMINISTRATIVE ORDER NO. 1
Series of 1959

November 17, 1959

AUTHORIZING FILIPINO OWNERS OF RESTAURANTS, HOTELS AND NIGHT CLUBS WITH RESTAURANTS TO CONTINUE EMPLOYING ALIENS IN THEIR RESTAURANTS FOR A PERIOD OF ONE YEAR BEGINNING DECEMBER 1, 1959 UNTIL NOVEMBER 30, 1960.

Whereas, Filipino owners of restaurants, hotels and night clubs with restaurants, and corporations, partnerships and associations, the capital of which is wholly owned by Filipinos, find difficulty in operating their restaurants without employing alien cooks, especially Chinese who are expert in Chinese dishes, which are in great demand by their customers;

Whereas, it would be a great loss to the business of said restaurant owners if they stop immediately the employment of said alien cooks, for which reason they have requested the Department of Commerce and Industry to be allowed to continue employing them for a certain period until their Filipino understudies shall have been sufficiently trained in the art of cooking foreign dishes; and

Whereas, the Department of Commerce and Industry is cognizant of the great inconvenience that will be caused the eating public, if the latter cannot be served with the foods they desire to order;

Now, therefore, in consideration of these premises, the Filipino owners of individual proprietorships, partnerships, associations or corporations, whose capital is wholly owned by Filipinos, are hereby duly authorized for a period of one year beginning December 1, 1959 until November 30, 1960 to continue employing aliens in their restaurants to serve as cooks therein; PROVIDED, that they shall employ Filipino understudies or trainees, and that said alien cooks after the period abovementioned shall be separated from their employment and the Filipino understudies shall take their places.

PERFECTO E. LAGUIO
Undersecretary of Commerce and Industry

APPOINTMENTS AND DESIGNATIONS

BY THE PRESIDENT OF THE PHILIPPINES

Ad Interim Appointments
October 1959

Noli Ma. Cortes as Provincial Fiscal of Cavite, October 10.

Benjamin Estacio as Register of Deeds of Silay City, October 23.

Geronimo Abellera as Auxiliary Justice of the Peace of San Manuel, Pangasinan, October 23.

Timoteo Abdon as Chairman; and Dr. Tomas Abello, Manuel Tuazon, Severino Manahan, and Restituto L. Chanco as Members of the Bo Assessment Appeals of Bataan, October 23.

Antonio B. Nago as Justice of the Pe Mercedes, Camarines Norte, October 26.

Isidro R. Saludes as Justice of the Pe Jose Panganiban, Camarines Norte, Octobe

Guillermo Dacumos as District Judge of th Judicial District, to preside over the Court o Instance of Cagayan and the sub-province o yao, Mt. Province, First Branch, at Tugu

RESOLUTIONS OF THE SUPREME COURT

Excerpts from the minutes of October 27, 1959

In G. R. No. L–16007, Jose C. Zulueta *vs.* Commission on Elections, the Court is unanimously of the opinion that, contrary to petitioner's contention, Republic Act No. 2259 is not a bill of local application.

However, the Court is evenly divided on the validity of that portion of Section 2 of Republic Act 2259 depriving the voters of Iloilo City of the right to vote for provincial officials.

The petitioner maintains that it constitutes a "rider", concerning a subject not expressed in, nor germane to, the title of the Act, which reads as follows:

"An act making elective the offices of mayor, vice-mayor and councilors in chartered cities, regulating the election in such cities and fixing the salaries and tenure of such offices."

The said section partly provides:

"SEC. 2. The Mayor, Vice-Mayor and Councilors shall be elected at large by the qualified voters of the city on the date of the elections for provincial and municipal officials in conformity with the provisions of the Revised Election Code: *Provided, however,* That the qualified voters of cities shall vote or shall not vote for provincial officials as their respective charters provide, except in the cities of Iloilo and Dagupan where the said voters shall not vote for provincial officials."

Five members of the Court, knowing that the proviso had been inserted in the conference committee, and believing that the constitutional requirement as to subject and title of statutes is designed to prevent the evils of all inclusive, incongruous legislation or of the combining of several unrelated matters into one bill so as to secure for it a support which the several subjects might not separately command, commonly called "logrolling" (82 Corpus Juris Secundum, pp. 347, 348) voted to annul such proviso as a "rider", it being a matter (on provincial officers) designedly engrafted in a bill regulating a different subject, namely the election of *city officials.* They believe the title did not afford a reasonable notice of its purpose *to deprive* certain city voters of their right to elect provincial officials, even as it expressed a purpose *to grant* all voters of chartered cities the right to elect their own city officials. Furthermore, they believe that *deprivation* of the right of suffrage *for governor* in some cities is totally incongruous with an act *avowedly to extend suffrage for city officials* to all chartered cities, and therefore, may not be deemed germane to the subject expressed in the title: election, salaries and tenure of *city officers.*

On the other hand, the other five members are aware that such deprivation of vote is nothing unusual,—there are at least ten other chartered cities like Iloilo and Dagupan, whose voters have no choice of provincial officials; and remember that this Court has regarded such disfranchisement as logical where (as in the case of Iloilo) the provincial officials have nothing to do with the city affairs. (Teves *vs.* Commission on Elections, G. R. L–5750, November 8, 1951.) Bearing in mind that the constitutional provision "should be construed liberally to uphold proper legislation * * *" so that a statute may not be held void in a case of plain and substantial breach of the limitation, (See 82 Corpus Juris Secundum, pp. 351, 362); and considering that the words "regulating the election in such cities" in the title could be deemed fairly to give notice to legislature and public of provisions both on *who shall vote* in such cities, and on the *officers they shall vote for,* with exceptions, if any; and considering further that Act 2259 related to chartered cities, and previous acts of the Congress on chartered cities contained provisions on whether their electors shall vote, or shall not vote, for provincial officials, the same five members, to repeat, are unable to hold that the proviso is repugnant or foreign to the subject-matter of the Act or that a situation has been presented of misleading, improper or "railroaded" legislation requiring enforcement of the constitutional principle herein mentioned.

Wherefore, in accordance with the Judiciary Act, Section 9, the proviso in question must be upheld. Accordingly, the appealed decision is hereby affirmed, and the preliminary injunction heretofore issued is dissolved. Costs against appellant."

Excerpts from the minutes of October 30, 1959

"In G. R. No. L–16074 (Jose Briones *vs.* Agapito Conchu) it appears that Special Prosecutors Agapito Conchu and Enrique Agana were on September 24, 1959, designated by the Secretary of Justice "to assist the Provincial Fiscal of Cebu and City Fiscal, respectively, in the investigations or prosecution of all offenses thereat." On October 5, 1959, one Jose Amadora filed with the Cebu Fiscal a complaint charging Provincial Governor Jose Briones of Cebu with having caused to be falsified daily time records of supposed special agents whom he appointed ostensibly to render public service but actually only for the purpose of making them collect salaries which he shared. The complaint mentioned Ismael Misa and Teofilo Lucero, Jr., provincial employees as accomplices. Such complaint having been indorsed to the above-mentioned prosecutors, they issued subpoenas for the corresponding

preliminary investigation which was scheduled for October 9, at 9:30 a.m. At that time, counsel for Governor Briones appeared and said:

"Mr. Investigator, please, it was only this morning, October 9, 1959, at 9:30 when my client, the Honorable Provincial Governor entered the investigation room that he was furnished a copy of the charges. He has been away in a continuous campaign for the past few days, and he is practically very tired as a consequence of that campaign. A perusal of the charges contained in six pages will readily show, Mr. Investigator, please, that there are very many allegations of facts. By reason of this supposedly complicated allegations of facts and in justice to my client, I most sincerely and respectfully pray that we be given at least five days within which to prepare ourselves, considering the fact that my client has been away for a continuous campaign."

Prosecutor Agana denied the request, saying that the investigation was preliminary, and that anyway, the Governor would be informed of the evidence against him; but upon further request of counsel, Agana agreed "to adjourn this investigation to 2:30 this afternoon;" and as alleged, ordered the investigation to proceed every afternoon, the investigators being busy with other matters in the mornings.

Claiming that such charges were trumped-up, and that the hurried investigation was part of the plan of the so-called Loyalists' Group, Nacionalista Party of Cebu (Governor Briones is a candidate for reelection of the adverse Osmeña–Cuenco group) to suspend the Governor and put, in his place, another "loyalist" man, as revealed and predicted by the party's organ "The New Day", Governor Briones applied to this Court for prohibition, to prevent "the exercise of legal authority or the use of the strong arm of the law in an oppressive or vindictive manner", citing apposite precedents.

Required to answer, all the respondents denied the existence of such plan. And the special prosecutors justify their actuation alleging: (1) if, as contended, the charges were false, the speedy termination of the investigation would benefit the Governor himself, (2) they expedited proceedings "due to limited time and funds, pursuant to existing department policy of conducting investigations speedily" and (3) anyway, the personal presence of the accused was not necessary at the present stage of the preliminary investigation.

After a careful and deliberate consideration, some members of the Court are inclined to view the trend of events above described in the light of petitioner's imputation of a planned suspension, considering especially the investigators' attitude of giving the accused Governor less than 24 hours to prepare his defense against grave charges of

falsification involving not less than 300 persons, attitude predicated on the untenable ground that the presence of the accused was not necessary.

Other members, reluctant to believe that the Head of the Department of Justice generally considered the least political of the Departments, could consent to such a scheme, would rather consider the case as one where over zealous prosecuting officers have rushed the investigation, on the assumption that "the governor need not be present"—which must be deemed erroneous, in view of the right of the accused to be present if he so desires, and the gravity of the charges.

All the members are agreed, however, that plan or no plan, the speedy investigation *at this time* unnecessarily, unfairly and unjustly places the petitioner in the alternative of either stopping his personal campaign for re-election in the last crucial days of the election or face probable prosecution and suspension from office. Unnecessarily, because the charges were filed only last month and the crime of falsification prescribes after 15 years. Unfairly and unjustly, because both extremes of his dilemma would entail disastrous consequences to petitioner.

A situation is thus presented where the course of legal proceedings become oppressive in the surrounding circumstances, or at least truly inequitable, specially considering the time-honored policy of the Government of generally not suspending local officials during pre-election days. (See Provincial Circular of the Assistant Executive Secretary, October 2, 1959.)

Wherefore, in line with the principles on prohibition, particularly those this Court has followed (Conde *vs.* Judge of First Instance, 45 Phil. 173, Conde *vs.* Rivera, 45 Phil. 650; Dimayuga *vs.* Fernandez, 43 Phil. 304) it is ordered that respondent special prosecutors shall temporarily abstain from proceeding with this investigation until the coming election day is over. Thus modified, the preliminary injunction heretofore issued is ratified."

Excerpts from the minutes of the Supreme Court of the Philippines of November 5, 1959

* * * * * * *

"In G. R. No. L–16123, Sergio Osmeña, Jr. *vs.* Enrique Quema, etc., et al., it appears that on September 10, 1959, pursuant to requisition request made during the first half of August, the Office of the Executive Secretary issued Treasury Warrant No. B–0,448,333 in the amount of ₱240,000.00 payable to the Philippine National Bank for deposit to the credit of the City Treasurer of Cebu City chargeable against the contingent fund of the President

provided for in Republic Act No. 2300, purportedly as "Aid for repair of damages caused by typhoons BELLIE and ELLEN on July 12 to 15, 1959" on certain roads, streets and places in the City of Cebu. Petitioner, as Congressman of the Second District of Cebu Province, a resident and a candidate for City Mayor of Cebu City, assails this allocation and disbursement of public funds as violative of the Constitution and of Republic Act 2300 on the alleged grounds stated in his sworn petition that (*a*) no such damage has been occasioned as no typhoon has passed the City of Cebu during the period of July 12 to 15, in fact typhoon "Bellie" was located in area approximately 400 miles east of the eastern coast of Central and Northern Philippines; (*b*) Republic Act 2301, section 9, prohibits the spending of money or the employment of any laborer in any public works project contained in this Act and other Public Works Acts within 45 days before every general or special election, except for the specific purposes enumerated therein; and (*c*) the disbursement of these funds constitutes a tampering of the impending election. Upon the facts alleged, a preliminary writ of injunction was issued ex-parte.

"Respondents, in their answer, controverted all grounds relied upon by petitioner and presented special and affirmative defenses raising questions of law which, in view of the conclusion reached by the Court, need not be discussed in detail except as may be necessary to the final disposition of the case. For instance, while it is true that under the doctrine of separation of powers, due respect must be accorded to each of the three co-equal departments of the government, and that neither of the three can question the motives, wisdom or propriety of the exercise of the other's functions within their own respective sphere, still it can not be seriously doubted that the Court, in an appropriate case, can inquire whether the expenditure or disposition of public funds, contingent or otherwise, is in accordance with the terms of the law appropriating such funds as duly enacted by the legislative branch pursuant to the Constitution. And this would not be interference on the part of the Court with the prerogatives of the Executive. It is merely performance of the Court's duty, when called upon in an appropriate case, to apply the Constitutional mandate that "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law." (Section 23 [2] of Art. VI, Constitution).

"With respect to the 45–day ban invoked by the petitioner, the Court finds that the same does not apply to the provisions of Republic Act 2300, which is the Appropriation Law. The cited provision of Republic Act 2301,

which is the Public Works Act of 1959, is limited to "any public works project *contained in this Act and other Public Works Acts.*" It has not been shown that the roads, streets and places, the repair of which was authorized to be financed by the contingent funds appropriated in Republic Act No. 2300, are contained in Republic Act 2301 and/or other Public Works Acts.

"On the question of actual damage, respondents presented certified copies of public documents and records establishing that the roads, streets and places in question had in fact been damaged as a consequence of the extraordinarily heavy rainfall caused by the Inter-Tropical Convergence Zone (a climatic phenomenon created by a typhoon which does not usually follow its path) generated, first by typhoon "Wilda" during the period July 5 to 9, 1959, followed by typhoon "Bellie" on July 11 to 15, and then by typhoon "Ellen" on August 11 and 12, which Inter-Tropical Convergence Zones all passed thru Northern Visayas.

"As the case now stands, it results that it is not indubitable, as first urged by petitioner, that there is total lack of justification for the expenditure in question as to amount to a complete and, therefore, illegal disregard of the limitations set in the law constituting such a clear and patent grave abuse of discretion, as is equivalent to lack of power or jurisdiction, warranting the exercise by the Court of its prerogatives under the Constitution in the manner provided in Rule 67 of the Rules of Court.

"The petition is hereby dismissed and the preliminary injunction dissolved, without costs, and without prejudice to action, if any, in the Court of First Instance."

Excerpts from the minutes of November 6, 1959

"In G. R. No. L–16133 (Alejo Santos, etc. *vs.* Hon. Nicasio Yatco, etc., et al.), considering that respondent Alejo Santos is Secretary of National Defense and head of the Department of National Defense, with power of control and supervision over the armed forces; considering that the position of Secretary of National Defense is not embraced and included within the terms 'officers and employees in the civil service' (as disclosed in the proceedings in the Constitutional Convention wherein the attempt of Delegate Mumar to include the heads of executive departments within the civil service was rejected); considering that the presidential form of government set up in the Constitution and the democratic procedures established therein of determining issues, political, economic or otherwise, by election, allows political parties to sub-

mit their views and the principles and policies they stand for to the electorate for decision; considering that respondent in campaigning for Governor Tomas Martin, candidate of the Nacionalista Party in the Province of Bulacan, was acting as member of the Cabinet in discussing the issues before the electorate and defending the actuations of the Administration to which he belongs; considering further that the question of the impropriety as distinct from illegality of such campaign because of its deleterious influence upon the members of the Armed Forces, who are administratively subordinated to the Secretary of National Defense, and who are often called upon by the Commission on Elections to aid in the conduct of orderly and impartial elections, is not justiciable by this Court; the Court hereby Resolves to grant the petition and hereby sets aside the order of the Honorable Nicasio Yatco, Judge of the Court of First Instance of Rizal, prohibiting respondent Alejo Santos from campaigning personally or in his official capacity. Justice Montemayor took no part."

DECISIONS OF THE SUPREME COURT

[No. L-9228. December 26, 1958]

LEONARDO DIAZ, ET AL., petitioners and appellants, *vs.* FELIX P. AMANTE, respondent and appellant

1. PUBLIC OFFICERS; DISMISSAL OF MEMBERS OF POLICE FORCE; WHEN ILLEGAL.—The dismissal of detectives or members of the police force made in a manner contrary to the procedure prescribed in Republic Act No. 557, is illegal and of no valid effect. Executive Order No. 264 promulgated on April 1, 1940 is no longer in force, the same having been impliedly repealed by said Republic Act No. 557.
2. ID.; APPOINTMENT OF NON-ILLEGIBLE TO POSITION IN THE CLASSIFIED SERVICE; TENURE OF OFFICE.—In accordance with Section 682 of the Revised Administrative Code, when a position in the classified service is filled by one who is not a qualified civil service eligible, his appointment is limited to the period necessary to enable the appointing officer to secure a civil service eligible, qualified for the position, and in no case is such temporary appointment for a longer period than three months.
3. MUNICIPAL CORPORATIONS; LIABILITY FOR DAMAGES ARISING FROM NEGLIGENT ACTS OF OFFICIALS; LIABILITY OF NEGLIGENT OFFICIAL.—The city government cannot be made liable for damages arising from the failure of the mayor to enforce any provisions of the law or from his negligence in the enforcement of any of its provisions. The mayor is personally liable.
4. ID.; LIABILITY OF NEGLIGENT OFFICIALS FOR MORAL DAMAGES.—But while respondent mayor in separating the petitioners from the service acted with gross negligence, or in bad faith, the award of moral damages against said mayor is not justified, for the same is already included in, if not absorbed by, the back salaries he was ordered to pay to petitioners.
5. ID.; LIABILITY FOR EXEMPLARY DAMAGES.—Exemplary damages should be imposed if only to curtail the abuses that some public officials are prone to commit upon coming to power in utter disregard of the civil service rules which constitute the only safeguard of the tenure of office guaranteed by our Constitution.

APPEAL from a judgment of the Court of First Instance of Negros Occidental. Makasiar, *J.*

The facts are stated in the opinion of the Court.

Benjamín V. Coruña and *José J. Díaz* for petitioners and appellants.

Assistant City Attorney Raymundo Rallos and *Angel F. Lobaton* for the respondent and appellant.

BAUTISTA ANGELO, *J.:*

Leonardo Diaz and Alberto Aguilar filed a petition for mandamus in the Court of First Instance of Negros Occidental against Felix P. Amante in his capacity as Mayor

of Bacolod City to compel the latter to reinstate them to their positions as members of the police force of said city.

The trial court, after hearing, rendered judgment ordering the respondent to reinstate petitioners as prayed for and to pay them (a) their unpaid salaries from August 16, 1951 up to the date of their reinstatement; (b) the sum of ₱5,000.00 as moral damages; (c) the sum of ₱2,000.00 as exemplary damages; and (d) to pay the costs of the proceedings. Respondent took the case on appeal to this Court on the ground that the only issue involved is one of law.

Leonardo Diaz was given a temporary appointment as third class patrolman on July 23, 1946 with an annual salary of ₱480.00. On October 1, 1946, he was given a promotion in salary in the amount of ₱600.00 per annum. On November 18, 1946, he was appointed also in a temporary capacity as second class officer with a salary of ₱660.00 per annum. On January 16, 1947, he was promoted to first class traffic officer with a salary of ₱690.00 per annum. On April 1, 1947, he was promoted in salary to ₱720.00 per annum. On July 1, 1947, he was given for the first time a permanent appointment as second class detective with a salary of ₱900.00 per annum. On July 1, 1948 and July 1, 1949, he was given a salary increase as permanent second class detective with a salary of ₱960.00 and ₱1,020.00 per annum respectively. On June 1, 1950, he was again promoted to first class detective with a salary of ₱1,080.00 per annum. And on July 1, 1951, his salary as permanent first class detective was increased to ₱1,320.00 per annum. He is a civil service eligible, having passed the qualifying examination for patrolman with a rating of 83%.

Alberto Aguilar is not a civil service eligible but on September 8, 1949 he was appointed as patrolman effective July 1, 1949. On February 8, 1950, he was promoted to second class detective, and when he was dismissed on August 15, 1951, he was a first class detective. He is an old veteran, having been a guerrilla under Lt. Col. Salvador Abcede.

On August 15, 1951, both Diaz and Aguilar were notified by respondent of their separation from the service effective at the close of business hours of said day for lack of trust and confidence upon the recommendation of the chief of police. With regard to Aguilar, he was separated on the additional ground of immorality and of maintaining a house of prostitution. His position was filled by a civil service eligible on August 16, 1951. As a justification for the action he has taken against petitioners, respondent invoked the provisions of Executive Order No.

264 promulgated by President Quezon on April 1, 1940 believing that petitioners as detectives who occupy confidential positions could be separated upon a moment's notice for lack of trust and confidence, and his authority to dismiss them was sustained by the Executive Secretary who in an indorsement intimated that the removal of a detective from the service for lack of confidence was lawful. His action was also sustained by a provincial circular issued on April 3, 1954 by the Executive Secretary confirming the propriety of his action.

With regard to petitioner Diaz, who admittedly was a civil service eligible and was extended on more than one occasion a permanent appointment as member of the police force of Bacolod City, there is no question that his dismissal was illegal for having been made in a manner contrary to the procedure prescribed in Republic Act No. 557.[1] Executive Order No. 264 is no longer in force, the same having been impliedly repealed by said Act. Thus, in Mission v. Del Rosario, 50 Off. Gaz., No. 4, 1571, this Court said: "It appearing that petitioners, as detectives, or members of the police force of Cebu City, were separated from the service not for any of the grounds enumerated in Republic Act No. 557, and without the benefit of investigation or trial therein prescribed, the conclusion is inescapable that their removal is illegal and of no valid effect. In this sense, the provisions of Executive Order No. 264 of the President of the Philippines should be deemed as having been impliedly repealed in so far as they may be inconsistent with the provisions of said Act."

A different consideration should be made with regard to petitioner Aguilar for it appears that he was not a civil service eligible even if he was extended several appointments as detective or patrolman by the City Mayor of Bacolod, for not being a civil service eligible, he is not qualified for a permanent appointment. Thus, in one case, this Court said: "In accordance with Section 682 of the Revised Administrative Code, when a position in the classified service is filled by one who is not a qualified civil service eligible, his appointment is limited to the period necessary to enable the appointing officer to secure a civil service eligible, qualified for the position, and in no case is such temporary appointment for a longer period than three months. As petitioners herein were not civil service

[1] Uy v. Rodriguez, July 30, 1954, 50 Off. Gaz., No. 8, pp. 3574–76; Abella v. Rodriguez, June 29, 1954, 50 Off. Gaz., No. 7, pp. 3039–41; Mission v. Del Rosario, Feb. 26, 1954, 50 Off. Gaz., No. 4, pp. 1571, 1573–74; Palamina v. Zagado, March 5, 1954, 50 Off. Gaz., No. 4, pp. 1566–67.

eligibles at the time of their appointment, and it does not appear that they have since then qualified for the positions they are holding, their respective appointments were only for a period of three months and not more." (Pana, et al. v. City Mayor, et al., G. R. No. L–5700, December 18, 1953).[2] The case of Aguilar comes squarely within the purview of this ruling.

The lower court ordered respondent not only to reinstate petitioners but also to pay them their back salaries and moral and exemplary damages in the aggregate amount of ₱7,000.00. We agree with the trial court that respondent should be made to pay the back salaries of petitioners for the reason that under the Charter of the City of Bacolod (Section 5, Commonwealth Act No. 326), the city cannot be made liable for damages arising from the failure of the mayor to enforce any provision of the law or from his negligence in the enforcement of any of its provisions. We may also agree with the trial court in holding that respondent in separating the petitioners from the service acted with gross negligence, if not in bad faith, considering the events of contemporary history that had happened in his province and his official acts amounting to abuse of authority of which the trial court took judicial notice in its decision, but we believe that the sum of ₱5,000.00 it slapped upon respondent as moral damages is not justified, for the same is already included in, if not absorbed by, the back salaries he was ordered to pay to petitioners. And with regard to the sum of ₱2,000.00 which respondent was ordered to pay as exemplary damages, the same is somewhat excessive, considering that respondent acted in the belief that he had the requisite authority under Executive Order No. 264 of the President which at that time has not yet been declared repealed by the Supreme Court. But these damages should be imposed if only to curtail the abuses that some public officials are prone to commit upon coming to power in utter disregard of the civil service rules which constitute the only safeguard of the tenure of office guaranteed by our Constitution. These damages should therefore be reduced to ₱1,000.00.

Wherefore, the decision appealed from is hereby modified as follows: respondent, or the incumbent Mayor of Bacolod City, is ordered to reinstate petitioner Leonardo Diaz as prayed for; respondent Amante is ordered to pay petitioner Diaz his unpaid salaries from August 16, 1951

[2] See also Reyes, et al. v. Dones, et al., G. R. No. L–11427, May 28, 1958.

up to the date of his reinstatement and the sum of ₱1,000.00 as exemplary damages. In all other respects, the decision appealed from is hereby reversed. With costs against respondent.

Parás, C. J., Padilla, Montemayor, Labrador, Concepción, Reyes, J. B. L., and *Endencia, JJ.,* concur.

Judgment reversed with modifications.

[No. L-10799. April 28, 1958]

URSULA JOSÉ DE VILLABONA, petitioner, *vs.* THE COURT OF APPEALS and SIMEONA SANTOS DE JOSÉ, respondents

1. HUSBAND AND WIFE; WHEN PROPERTY IS PARAPHERNAL.—Where it is admittedly and satisfactorily shown by evidence that a property is paraphernal, there is no basis for a claim that it was acquired during the marriage between the spouses or is a conjugal partnership property.
2. ID.; OWNERSHIP OF BUILDING CONSTRUCTED ON PARAPHERNAL PROPERTY.—Where it was proven that a building was erected with the exclusive fund of the wife on her paraphernal lot, said building is her own exclusive property in line with the provision of paragraph 4, Art. 1396 of the Spanish Civil Code.

REVIEW by Certiorari of a decision of the Court of Appeals.

The facts are stated in the opinion of the Court.

Delfín J. Villanueva, Sergio I. García & Oscar I. García for petitioner.

Augusto Revilla for respondents.

LABRADOR, *J.:*

Action instituted by Ursula José de Villabona, petitioner herein, one of the children of the deceased Ramon José by his marriage to Asuncion Reyes, now deceased, to be declared with the other children of said marriage, owners of an undivided one-half share of a lot located at No. 530 Zurbaran Street, Sta. Cruz, Manila, and a building erected thereon, as the share of the said deceased Ramon José in his conjugal partnership with his surviving spouse, the defendant Simeona Santos Vda. de José. Against a judgment rendered by the Court of Appeals, affirming that of the Court of First Instance of Manila dismissing the action, the plaintiff has appealed to this Court by certiorari.

The subject matter of the action is Lot No. 12-B, Block No. 2210, San Lazaro Estate, G.L.R.O. Record No. 11546, located at the corner of Zurbaran and Mangahan Streets, Sta. Cruz, Manila, and the building of strong materials constructed thereon, described in amended plan (Exh. 6). Both the land and the building are declared in the name of the defendant Simeona Santos, originally under assessment No. 189 and subsequently No. 203. Plaintiff claims that the lot in question was acquired during the marriage of the late Ramon José and the defendant Simeona Santos, and that the building constructed thereon was also erected during the existence of the said marriage, for which reason both lot and building are presumed conjugal partnership properties of the said spouses. The defendant specifically denies the above claims, and by way of counterclaim she alleges that the complaint is malicious and un-

just. She, therefore, prays that the complaint be dismissed and that the plaintiff be ordered to pay defendant attorney's fees in the sum of ₱1,000 and moral damages in the amount of ₱10,000. The Court of First Instance, Hon. Froilan Bayona, presiding held that both the lot and the building constructed thereon are paraphernal properties of the defendant. Case having been appealed by the plaintiff to the Court of Appeals, the latter affirmed the judgment.

The evidence submitted, which consists mainly of documents official or authentic, discloses the following: Defendant's title to the lot was issued upon the execution of an extrajudicial deed of partition between defendant Simeona Santos, Bonifacia Santos and Mercedes Santos (Exh. 3), in which they declare that they are owners pro-indiviso of lot No. 12, Block 2210, Hacienda de San Lazaro, covered by Transfer Certificate of Title No. 37211, Manila. The lot now in question is expressly assigned and conveyed to defendant Simeona Santos as her share in the common property. This deed of partition bears the written conformity and signature of defendant's deceased husband Ramon José. As to when Transfer Certificate of Title No. 37211 was issued in the name of Simeona Santos, Bonifacia Santos and Mercedes Santos nothing is disclosed in the record. Title issued in the name of defendant Simeona Santos as a result of the partition is Transfer Certificate No. 38003 and is dated at Manila on May 30, 1931.

On August 17, 1931, Simeona Santos executed a deed of mortgage of the said lot for a loan of ₱8,500, in favor of El Ahorro Insular. This mortgage was registered on August 18, 1931. On November 28, 1936, Simeona Santos transferred the mortgage to the National Loan and Investment Board for a loan of ₱7,500, and on January 14, 1941 the mortgage was again transferred to the Agricultural and Industrial Bank for ₱7,000. The mortgage was cancelled on September 17, 1948. All the above transactions appear at the back of Transfer Certificate of Title No. 38003.

As already adverted to previously, the permit to construct the building on the lot bears No. A–9235, dated August 27, 1931, under the name of Simeona Santos de José, and the final certificate issued is No. 17674 dated November 19, 1931 (Exh. I). The plan for the building is in the name of Simeona Santos de José (Exh. 6). The insurance policy issued on the building is also in the name of Mrs. Simeona Santos de José (Exhs. 7, 7–A, 7–b, 7–c, 7–d for the years 1941, 1942, 1943 and 1944). All payments on the real estate loan after the war have been in the name of Simeona Santos. The only documents

relating to the lot and building bearing the name of Ramon José are the receipts for payment to the Agricultural and Industrial Bank, although the account indicated as being paid is Trust Department Account 6012–R, which is in the name of the defendant Simeona Santos. The marriage between the deceased Ramon José and Simeona Santos took place on May 9, 1920 (Exh. E), and Ramon José died on November 6, 1943. It also appears from the record that Transfer Certificate of Title No. 38003 was originally issued in the name of "Simeona Santos, married to Ramon José", but that after the death of the latter the name appearing on the transfer certificate of title was changed to "Simeona Santos, widow."

The main issue raised before us is: Does the evidence submitted justify the decision of the lower court that the land and the building constructed thereon are paraphernal properties of the defendant Simeona Santos; or is it not insufficient to overcome the presumption that they are conjugal properties? Also, in the event that the lot is paraphernal property of the defendant is the building constructed thereon conjugal partnership property in accordance with Article 1404, par. 2 of the Spanish Civil Code?

We find that there is no evidence in support of the claim that the lot was acquired by the defendant during the lifetime of her spouse Ramon José. The deed of extrajudicial partition, as a result of which title to the lot was issued in defendant's name, shows that defendant was a co-owner of the bigger lot which was subdivided among the three original co-owners. When this co-ownership of the bigger lot which was subdivided by the co-owners was originally acquired by the three, is not shown. The issuance of the title for the first time in the exclusive name of Simeona Santos does not mean that she acquired it for the first time on the date (of execution of said partition). Most probably the lot which was subdivided among the three co-owners must have been bought in common or inherited from parents or other relatives. But by his conformity to the partition, Ramon José acknowledged his wife's exclusive ownership. There is furthermore evidence that counsel for the plaintiff had admitted that this lot in question is paraphernal property (Exh. 1). There is, therefore, no basis for the claim that the lot was acquired during the marriage between Simeona Santos and Ramon José, or is conjugal partnership property.

The provisions of the Spanish Civil Code which may have application to the next issue, which is that of the ownership of the building constructed on the lot, are par. 4, Article 1396 and par. 2 of Article 1404, which provide as follows:

"The following is the separate property of each of the spouses:

* * * * * * *

4. Property purchased with money belonging exclusively to the husband or the wife." (Article 1396)

* * * * * * *

"Buildings constructed during the marriage on land belonging to one of the spouses, shall also belong to the partnership, but the value of the land shall be paid to the spouse to whom it belongs." (Art. 1404)

The important issue upon which the decision of the important question must rest is whether the money obtained as loan from El Ahorro Insular, with which the building was constructed, is conjugal partnership property or paraphernal property, because if the funds obtained are conjugal in nature then paragraph 2 of Article 1404 would apply and, in the opposite case, that of paragraph 4 of Article 1396. Under the law the husband is the administrator of the conjugal partnership properties (Art. 1412, Spanish Civil Code); and if it was the intention of the spouses to have secured the loan for the partnership, the husband would naturally have joined in the execution of the mortgage as a principal debtor, with all the legal consequences resulting to the partnership. He did not, however, participate in the execution of the mortgage but only the wife secured the loan in her own name and consequently for herself alone. That the loan was meant to be for herself, the wife, is also borne out by the fact that the permit for the building which was to be constructed and the plan thereof were made in the name of the wife and not in the name of the partnership. This execution by the wife alone of the mortgage, the securing of the permit in her own name and the construction of the building also in her own name, to the exclusion of her husband, point out to the fact that she and her husband had agreed that the loan would be her own responsibility. These circumstances also point out to the intention of the husband and his wife to make it appear clearly that the new building was to be erected with the exclusive funds of the wife and that it would be her own exclusive property, this being in line with the provisions of paragraph 4 of Article 1396 of the Spanish Civil Code. A building constructed using a loan obtained under the above circumstances belongs exclusively to the wife, this question having been expressly passed upon by this Court in the case of Lim Queco *vs.* Ramirez, 71 Phil. 162:

"Mientras estaban viviendo en armonia, el apelante y la apelada, hicieron construir una casa en las referidas cuatro fincas urbanas de la última; pero para ello, hubo necesidad de que ella solicitase y obtuviese de 'El Ahorro Insular' que es una sociedad mutua de construcción y prestamos, el 24 de febrero de 1933, in préstamo de ₱3,500. No recibí sin embargo, de esta suma, sino solamente la cantidad de ₱2,884.10 porque el resto se había invertido en el pago

por adelantado de intereses, y en el de ciertas primas, y en el de los demas gastos incidentales de la transacción. Para garantizar el pago del referido préstamo, la apelada hipotecó a su acreedora 'El Ahorro Insular' con el consentimiento del apelante sus mencionadas cuatro fincas."

* * * * * * *

"No hay por que decir nada de la cantidad obtenida por via de préstamo de 'El Ahorro Insular', porque la misma no puede en modo alguno ser considerada como un bien ganancial. Es en todo caso bien parafernal de la apelada porque si la obtuvo, fue poniendo en garantía de su pago, sus propios bienes parafernales; y de estos dice la ley que son todos aquellos bienes que la mujer aporta el matrimonio sin incluirlos en la dote, y los que adquiere despues de constituida la misma sin agregarlos a ella. Y no vale decir que la expresada cantidad es talmente un fruto de los bienes parafernales de la apelada, porque puridad no lo es, en el sentido en que la frase 'frutos' esta usada en los artículos 1385 y 1401 del Codigo Civil."

The fact that payments of the installments on the unpaid balance of the loan secured by the mortgage were in the name of the husband loses importance if we take into account that the payment was made applicable to the account of the wife. What the source was of the payments no evidence has been given. We find, however, that of the original loan of ₱8,500 there was still due and owing in the year 1941 the amount of ₱7,000, although it is claimed by the defendant herself that only ₱5,000 remains of the indebtedness after the death of her spouse; so that of the original loan of ₱8,500, not all of which has been received because the interest was already deducted from the loan, some ₱3,000 must have been paid out of conjugal partnership funds. The right of the heirs of the deceased husband to demand that portion of this advance partnership funds be borne by the defendant should however be recognized, barring such defenses as may have existed or may have arisen.

WHEREFORE, the judgment appealed from is hereby affirmed, with costs against the appellant, subject to the reservation mentioned above.

Parás, C. J., Bengzon, Montemayor, Bautista Angelo, Concepción, Reyes, J. B. L., Endencia, and *Félix JJ.,* concur.

Judgment affirmed.

[No. L-12646. April 30, 1958]

VICTORIA D. MIAILHE, MONIQUE M. SICHERE, ELIAN M. DE LENGCQUESING, and WILLIAM ALAIN MIAILHE, petitioners, *vs.* RUFINO HALILI, JOSEFINA PUNZALAN, and THE COURT OF APPEALS, respondents.

1. COURTS; ORIGINAL JURISDICTION; COURT OF APPEALS TO ISSUE WRITS OF MANDAMUS, INJUNCTIONS, ETC.—Under Section 30 of the Judiciary Act of 1948, as amended as well as Section 4 of Rule 67, Rules of Court, the original jurisdiction of the Court of Appeals to issue writs of mandamus, prohibition, injunction, certiorari, habeas corpus, and all other auxiliary writs and processes is limited to cases where the issuance thereof would be "in aid of its appellate jurisdiction."

2. ID.; ID.; ID.; ITS BASIS.—The basis of the jurisdiction of the Court of Appeals to issue writs of mandamus, certiorari, prohibition, etc, is its power to review the final judgment in the main case. That is the Court of Appeals would have jurisdiction to issue said writs in an appeal could be made to said Court from the judgment of the lower court in the main case (Roldan *vs.* Villaroman, 69 Phil. 12; Breslin *vs.* Luzon Stevedoring Co. 47 Off. Gaz., 1170; Pineda & Ampil Mfg. Co. *vs.* Bartolome, G. R. No. L-6904, September 30, 1954).

ORIGINAL ACTION in the Supreme Court. Certiorari and Prohibition with Preliminary Injunction.

The facts are stated in the opinion of the Court.

Ross, Selph, Carrascoso & Janda for petitioners.
Halili, Alcera & Bolinao for respondents.

REYES, J. B. L., *J.:*

On August 30, 1955, in Civil Case No. 22152 of the Court of First Instance of Manila, in which respondent Rufino P. Halili is the plaintiff and petitioners Victoria D. Miailhe, et al. are the defendants, the trial court rendered judgment against the plaintiff as follows:

"WHEREFORE, judgment is hereby rendered in favor of the defendants and against the plaintiff, ordering the latter to pay the former the sum of ₱3,100 a monthly rental for the occupation of the lot described in Exhibit A during the last two years of the lease, that is, from December 1, 1953 to November 30, 1955 and to pay the costs."

From the above judgment, plaintiff Rufino P. Halili appealed to the Court of Appeals, but because the amount involved is ₱77,400, excluding damages and interests, the appeal was certified by the Court of Appeals to this Court and docketed herein as G. R. No. L-13229.

In the meantime, during the pendency of the appeal, defendants Miailhe, et al. applied for the issuance of a writ of execution pending appeal unless plaintiff Halili furnish a supersedeas bond. The trial court granted the application, and as Halili failed to furnish the bond, writ of execution was issued on October 22, 1955, and a first and second alias writs on October 10, 1956 and March

13, 1957 respectively. Claiming that the trial court acted without or in excess of jurisdiction or with grave abuse of discretion in issuing the execution orders, plaintiff Rufino P. Halili and his wife Josefina Punzalan filed a petition for certiorari with prohibition and preliminary injunction with the Court of Appeals for the nullification of said writs of execution (C. A.–G. R. No. 20328–R). The petition was given due course and a writ of preliminary injunction was issued. Respondents Victoria Miailhe, et al. asked for the dismissal of the petition on the ground that the Court of Appeals has no jurisdiction over the subject-matter thereof, but the Court of Appeals refused to dismiss the same, holding that although the main case involves an amount beyond its jurisdiction, the issue in the petition for certiorari is simply the alleged grave abuse of discretion committed by the lower court in issuing writs of execution pending appeal. Having failed to obtain reconsideration of the ruling of the Court of Appeals, respondents filed the present petition for certiorari with this Court.

We agree with the petitioners that the Court of Appeals erred in holding that it had jurisdiction to entertain the petition in question.

Under section 30 of the Judiciary Act 1948, as amended, as well as section 4 of Rule 67, Rules of Court, the original jurisdiction of the Court of Appeals to issue writs of mandamus, prohibition, injunction, certiorari, habeas corpus, and all other auxiliary writs and processes is limited to cases where the issuance thereof would be "in aid of its appellate jurisdiction". Explaining the phrase "in aid of its appellate jurisdiction", former Chief Justice Moran wrote in his commentaries on the Rules of Court:

> "A writ of mandamus, prohibition or certiorari against a lower court is said to be in aid of the appellate jurisdiction of the Court of Appeals within the meaning of section 30 of Republic Act No. 296, if the Court of Appeals has jurisdiction to review, by appeal or writ of error, the final orders or decision of the former, and said writs are issued by the Court of Appeals in the exercise of its supervisory power or jurisdiction over the wrongful acts or ommissions of the lower court that are not appellable. But if the Court of Appeals has no appellate jurisdiction it could not issue writs of mandamus, prohibition or certiorari in aid of an appellate jurisdiction which it does not have. In other words, the supervisory power or jurisdiction of the Court of Appeals to issue mandamus, prohibition, or *certiorari* in aid of its appellate jurisdiction must co-exist with and be a complement to its appellate jurisdiction to review by appeal or writ of error, the final orders and decisions of the lower court, in order to have a complete supervision over the acts of the latter." (II Moran, Rules of Court, 1957 Ed., pp. 192–193)

In line with the above commentary, we have repeatedly held that the basis of the jurisdiction of the Court of Appeals to issue writs of mandamus, certiorari, pro-

hibition, etc. is its power to review the final judgment in the main case. That is, the Court of Appeals would have jurisdiction to issue said writs if an appeal could be made to said Court from the judgment of the lower court in the main case (Roldan *vs.* Villaroman, 69 Phil. 12; Breslin *vs.* Luzon Stevedoring Co. 47 Off. Gaz. 1170; Pineda & Ampil Mfg. Co. *vs.* Bartolome, G. R. No. L–6904, September 30, 1954).

In the instant case, while it may be true that the issue raised by respondent's complaint in the court below is limited to the question of the just and reasonable monthly rental for the premises he is leasing from the petitioners, the latter, however, in their counterclaim, had asked for the payment of all rentals due and unpaid by plaintiff which, as found by the court *a quo*, amounted to ₱77,400, and accordingly, plaintiff was ordered to pay the defendants this amount, exclusive of damages and interests. Clearly then, the amount involved in the main judgment is beyond the jurisdiction of the Court of Appeals and the appeal therefrom is cognizable by, as in fact it is pending before, this Court. As the Court of Appeals has no appellate jurisdiction over the judgment in the main case, so it can have no jurisdiction to issue a writ of certiorari to enjoin execution thereof pending appeal. Otherwise, issuance thereof by said Court would be in aid of an appellate jurisdiction that does not exist.

WHEREFORE, Case G. R. No. 20328–R of the Court of Appeals entitled "Rufino Halili, et al. *vs.* Hon. Froilan Bayona, et al." is ordered dismissed for lack of jurisdiction of said court to entertain the petition, and all orders already issued therein by the Court of Appeals are declared null and void. Costs against respondents Rufino P. Halili and Josefina Punzalan.

SO ORDERED.

Parás, C. J., Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepción, Endencia, and *Félix, JJ.,* concur.

Case dismissed.

[No. L-11050. April 30, 1958]

CESAR VARGAS, ET AL., petitioners and appellants, *vs.* VICENTE S. TUASON, ET AL., respondents and appellees

PLEADING AND PRACTICE; ORDER DENYING MOTION TO QUASH; CORRECTNESS OF ORDER, HOW DETERMINED.—An order denying a motion to quash can not be the subject of certiorari which is a remedy intended only to keep an inferior court within the limits of its jurisdiction or to correct a grave abuse of discretion. The determination of its correctness, if at all, should be brought on appeal after the trial of the case, and not on certiorari.

APPEAL from a judgment of the Court of First Instance of Camarines Sur. Palacio, *J.*

The facts are stated in the opinion of the Court.

Briones, Briones, Briones & Bongón and *Borja & Surtida* for petitioners and appellants.

City Attorney Luís B. Uvero for the respondent and in his own behalf.

ENDENCIA, *J.:*

On February 27, 1956, respondent City Attorney Luis B. Uvero filed with the Municipal Court of the City of Naga, Camarines Sur, two informations for gambling: one against Cesar Vargas and Shea An Chun, docketed as Criminal Case No. 5248, and another against Cesar Vargas and Aniceta Zantua, docketed as Criminal Case No. 5249. In both cases the informations are similar and read as follows:

"That on or about February 22, 1956, in the City of Naga, Philippines and within the jurisdiction of this Honorable Court, accused Cesar Vargas, owner of a gambling device, a slot machine wherein a game is played and wagers consisting of money are played and winning therein depends wholly or chiefly upon chance, and accused Shea An Chun, owner and manager of the Shea's Lunch, Naga City, and as such having control and charge of the same, confederating together and mutually helping one another, did, then and there wilfully, unlawfully, feloniously and knowingly permit and tolerate to be played therein said game of chance or hazard commonly known as "Jackpot".

"That on or about February 22, 1956, in the City of Naga, Philippines and within the jurisdiction of this Honorable Court, accused Cesar Vargas, owner of gambling devices, slot machines wherein a game is played and wagers consisting of money are played and winning therein depends wholly or chiefly upon chance, and accused Aniceta Zantua, owner and manager of the Cosmos Resturant, Naga City, and as such having control and charge of the same, confederating together and mutually helping one another, did, then and there wilfuly, unlawfully, feloniously and knowingly permit and tolerate to be played therein said game of chance or hazard commonly known as "jackpot".

Respondent Judge Vicente S. Tuason of said Court gave due course to said cases, ordered the arrest of the petitioners, and, after their plea of not guilty, set the

cases for trial on March 8, 1956. Petitioners-appellants, however, instead of going to trial on that day, filed a motion to quash the information on the following grounds:

1. That the City Attorney had no authority to file the information;

2. That the information contained averments which, if true, would constitute a legal excuse or justification; and

3. That the facts charged in the information did not constitute an offense."

After proper hearing and consideration of the memoranda submitted by the parties, the respondent Judge, on March 20, 1956, denied the motion to quash for not being well taken. Not satisfied with this ruling, petitioners-appellants filed with the Court of First Instance of Naga a petition for certiorari with injunction to secure the annulment of the order of the respondent Judge denying petitioners' motion to quash, to prohibit him from further hearing the aforesaid cases on the ground that he had no jurisdiction to try them, and to declare that respondent City Attorney had no authority to file the aforementioned informations. In the petition, they insisted that the informations contained averments which, if true, would constitute a legal excuse or justification, and that the facts charged in the informations do not constitute an offense under existing laws; that under paragraph N, Section 15 of Republic Act No. 305 (the Charter of Naga City) the Municipal Board has authority to regulate the operation and maintenance of slot machines and to fix the amount of the license fees thereof, and pursuant thereto, the Municipal Board passed and approved Ordinance No. 72, as amended by Ordinance No. 116, which fixed the license fees, so that the operation of the slot machines within the territorial jurisdiction of the City of Naga was allowed and, therefore, there is no cause of action against the petitioners; that, accordingly, the informations filed against them should be quashed and, consequently, the respondent Judge abused his discretion and exceeded his jurisdiction when he failed to grant their motion to quash the informations.

Respondents herein answered the petition alleging that the denial of the motion to quash by the respondent Judge was proper; that the slot machine mentioned in the informations was a gambling device—as it will be shown during the trial of the case—which falls within the provision of Article 195 of the Revised Penal Code, and is not the slot machine regulated by the Municipal Ordinance No. 72 of the City of Naga; and that the petitioners have still the remedy of appeal against the order of the respondent Judge dismissing the motion to quash.

Thereafter the case was set for hearing, and after proper trial, the lower court, presided by Hon. Perfecto Palacio, denied the petition for the well-founded reasons stated in the decision, which are as follows:

"It appears from the evidence presented that the petitioners were accused by the respondent, City Attorney Luis B. Uvero, of the violation of the gambling law under the provisions of the Revised Penal Code, before the Municipal Court of the City of Naga, (Annexes A and B); that said petitioners filed a motion to quash said criminal cases before said Municipal Court, (Annex C), on the following grounds: that the City Fiscal has no authority to file the information; that the information, although it contains averments which, if true, would constitute an offense, (Annex C). However, the respondent Judge denied said motion, (Annex D).

"The petitioners now come to this Court and ask that it prohibits the City Attorney of the City of Naga from prosecuting them of the crime of gambling under the provisions of the Revised Penal Code in view of the fact that the provisions of Republic Act No. 305 known as the Charter of the City of Naga, particularly paragraph N of Section 15 thereof, impliedly permitted them to use slot machine in the operation of gambling game as they were authorized by City Ordinance No. 72, series of 1950 of the City of Naga which regulates the use of said slot machine upon payment of a certain fee; and to declare the Municipal Court of the City of Naga presided over by Judge Vicente S. Tuason without authority and jurisdiction to hear and decide said criminal cases.

"The only question to be determined here is whether or not, City Attorney Luis B. Uvero of the City of Naga has authority, as such prosecuting the petitioners of the offense of gambling through the use of slot machine in view of the permission granted to them by Republic Act No. 305 and the City Ordinance No. 72, series of 1950 of the City of Naga by allowing them to pay a license for the operation of the same under certain regulations, and whether or not Municipal Judge Vicente S. Tuazon has jurisdiction to try and decide said criminal cases.

"Under the provisions of the Judiciary Act of 1948, (Sec. 87, Rep. Act No. 296) municipal judges and justices of the peace were vested with original jurisdiction to try and decide gambling cases. Likewise, the City Attorney of the City of Naga as prosecuting officer of said city, is empowered and authorized to prosecute crimes and violations of city ordinances of the City of Naga committed within the territorial jurisdiction of said City, (Section 24, paragraph (G) of Republic Act No. 305). As the petitioners allegedly violated the provisions of gambling law, (Article 195 of the Revised Penal Code), within the City of Naga, the City Attorney of said city is perfectly within the authority granted him by law to prosecute the persons who violated said law. In like manner, the Municipal Court of the City of Naga has the exclusive jurisdiction to try and decide said violations of law as granted it by the Judiciary Act of 1948, as amended.

"It is true that the petitioners were permitted by City Ordinance No. 72, series of 1950 to operate the slot machine in their establishments, but this fact alone does not exempt them from the operation of the provisions of Article 195 of the Revised Penal Code as amended, for the reason that the slot machine which City Ordinance No. 72, series of 1950, allowed them to operate by virtue of their payment of a license fee, is the slot machine which is used for amusement, and not the slot machine used in gambling games. The Court cannot subscribe to the theory of the

petitioners that, because Republic Act No. 305, and City Ordinance No. 72, series of 1950 of the City of Naga, respectively, allowed them to operate slot machine in their establishments, they are permitted or authorized to indulge in gambling through the use of said device, for the reason that gambling is prohibited and penalized by the Revised Penal Code, and as slot machines are of many types, some of them being used and operated for amusement purposes, and others are used and operated for gambling purposes, as defined in Corpus Juris Civiles, it is clear that the slot machine referred to in Republic Act No. 305 and regulated by City Ordinance No. 72, series of 1950, of the City of Naga, refers to the slot machine used and operated for amusement purposes only.

"Moreover, even if the petitioners were convicted by the Municipal Court of the City of Naga for the violation of the provisions of Article 195 of the Revised Penal Code, (Gambling Law), of which they were charged in Criminal Cases Nos. 5248 and 5249, (Annexes A and B), still they have the remedy of appeal, and therefore, their petition for certiorari and prohibition in this case is without legal ground."

In this jurisdiction, the only assignment of error is as follows:

The lower court erred in not holding that there is law for which the petitioners may be successfully prosecuted in the light of the charter provision of Republic Act No. 305, otherwise known as the Charter of the Citiy of Naga, and that Article 195 of the Revised Penal Code cannot be applied.

Carefully considered, this assignment of error provokes a question which constitutes a matter of defense that should be presented in the trial of the cases filed against the petitioners in the Municipal Court and cannot be entertained in this appeal for, without proper evidence, the Court of First Instance of Naga as well as this Court cannot determine whether the facts involved in the aforesaid criminal cases Nos. 5248 and 5249 should really fall under the provisions of Republic Act 305 or under Article 195 of the Revised Penal Code. On this score alone, the present case as well as the appeal taken against the decision rendered therein should be dismissed; but, besides the foregoing reasons, we find that the order of respondent Judge Vicente S. Tuason cannot be the subject matter of certiorari with prohibition for it was entered with jurisdiction and without abuse of discretion. That order constitutes an incident in the trial of said criminal cases Nos. 5248 and 5249 in the Municipal Court of Naga City, and the determination of its correctness, if at all, should be brought on appeal to the Court of First Instance of Naga, after the trial of the cases, and not on certiorari. On the other hand, we find that the information filed against the petitioners aver facts which constitute an offense under Article 195 of the Revised Penal Code; that they contain no allegation which would constitute a legal excuse or justification of petitioners' responsibility for the violation of law charged against

them in said informations, and we see no reason why the respondent City Attorney could not validly file said informations which clearly charge a violation of law committed within the jurisdiction of the Municipal Court of Naga City. Evidently the order of respondent Judge Tuason denying petitioners' motion to quash was well taken and could not be the subject of certiorari which is a remedy intended only to keep an inferior court within its jurisdiction or to correct a grave abuse of discretion.

WHEREFORE, finding no error in the decision appealed from, the same is hereby affirmed, with costs against the petitioners.

Parás, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepción, Reyes, J. B. L. and *Félix, JJ.*, concur.

Judgment affirmed.

DECISIONS OF THE COURT OF APPEALS

[No. 24251-R. March 12, 1959]

IGNACIO A. LUNA, petitioner, *vs.* HON. MANUEL M. CALLEJA, as Judge of the Court of First Instance of Sorsogon, SANTOS YAP and LOURDES YAP, respondents.

1. CERTIORARI; MANDATORY REQUISITE OF CERTIORARI.—It is a mandatory requisite of the extraordinary remedy of certiorari that the tribunal, board or officer exercising judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion, and that there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law.
2. ACTION TO RECOVER POSSESSION; PRELIMINARY INJUNCTION.—It is now settled that during the pendency of an action to recover possession, the plaintiff could be placed in possession of the property by force of a writ of preliminary injunction. (Torres et al., *vs.* Querubin et al., 53 Off. Gaz., p. 4457, July 31, 1957).

ORIGINAL ACTION in the Court of Appeals. Certiorari with preliminary injunction.

The facts are stated in the opinion of the Court.

Ramon C. Fernandez, for petitioner.
Rañola & Luna, for respondents.

PEÑA, *J.:*

On November 10, 1958, a complaint against Ignacio A. Luna was filed by the spouses Santos Yap and Lourdes Yap in the Court of First Instance of Sorsogon for recovery of ownership and possession of certain parcels of land situated in barrio Bariis, Pilar, of said province, with preliminary injunction (Civil Case No. 1342). Answering the complaint, the defendant prayed for its dismissal, and in his opposition to the motion for preliminary injunction, he also prayed for its denial. Notwithstanding such opposition, the lower court issued the following order on December 4, 1958—

"Despues de un examen de la demanda jurada y de los anexos A y B como tambien del Exhibito A, la Corte entiende que existen pruebas *prima facie* de que los demandantes son los dueños de las propiedades en cuestion cubiertas por el Certificado de Transferencia de Titulo No. T-1124 del Registro de Titulos de la Provincia de Sorsogon, a nombre de dichos demandantes, y que el demandado esta descolgando frutas de coco tiernas o sin madurar en grave perjuicio de aquellos. Por otra parte, en la contestacion del demandado no se alega especificamente en que consiste su titulo para justificar su posesion de los terrenos.

POR TANTO, se ordena al Escribano a que expida un mandamiento de interdicto prohibitorio preliminar dirigida al demandado, sus agentes y mandatarios para que durante la pendencia de esta causa se abstengan en ejecutar actos de posesion de los terrenos en cues-

tion, descolgando cocos y cortando cualquier otros arboles, previa prestacion de una fianza de ₱4,000.00 suscrita por dos o mas fiadores solventes y aprobada por este JUZGADO."

As defendant's motion for reconsideration of the aforequoted order of December 4, 1958, was denied, he now comes before us by way of a petition for certiorari with preliminary injunction, alleging that the issuance of the writ of preliminary injunction by the court below was highly illegal and improper in that the important question of possession was completely ignored and that the petitioner (defendant in Civil Case No. 1342) was deprived of his possession summarily without giving him his day in court in a trial on the merits; and that the trial judge acted with grave abuse of discretion in issuing said preliminary injunction restraining herein petitioner from executing acts of possession on the lands in question. It was, therefore, prayed, that the petition for a writ of certiorari be granted and that the order of December 4, 1958, be declared null and void, it having been issued in grave abuse of discretion, and that a writ of preliminary injunction restraining the respondents from enforcing and executing the writ of preliminary injunction complained of be immediately issued upon the filing by the petitioner of a bond in such amount as may be fixed.

In their answer to the aforesaid petition, respondents prayed to dismiss the same and to deny the preliminary injunction.

It is a mandatory requisite in this kind of extraordinary remedy that the tribunal, board or officer exercising judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion, and that there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law. After acquainting ourselves with what had transpired in the proceedings in the court below, we are satisfied that respondent judge did not abuse his discretion in issuing the order complained of, dated December 4, 1958. The basic complaint, as was stated above, is one of recovery of possession and ownership of certain parcels of land described in said complaint. The basis of the claim is Transfer Certificate of Title No. T–1124 issued by the Register of Deeds of Sorsogon in the names of the spouses Santos Yap and Lourdes Yap, plaintiffs in the aforementioned Civil Case No. 1342 and herein respondents. Notwithstanding such documentary evidence, respondent judge gave defendant in that civil case, who is the herein petitioner, to present his side by setting the motion for preliminary injunction for a hearing. Accordingly, said defendant (now petitioner) appeared with his counsel, but did not clarify what legal claim he was assert-

ing to the parcels of land. Under such circumstances, it cannot be said that respondent judge had abused his discretion in issuing the writ complained of, especially so when he had issued the same only upon the filing of the required bond.

While it may be true that herein petitioner was formerly in possession of the lands in dispute, but it is now settled that plaintiff in a case of recovery of possession could now be placed in possession of the property by force of a writ of preliminary injunction, as held in the case of Torres et al., *vs.* Querubin et al., 53 Off. Gaz., p. 4457, July 31, 1957—

"Prior to the promulgation of the New Civil Code of 1950, during the pendency of an action for the recovery of possession of real property, it was improper to issue a preliminary writ of injunction where the party to be enjoined had already taken complete material possession of the property involved, this under the theory that the effect of the writ would be to deprive the actual possessor of his material and actual possession and place the plaintiff in possession, all without due process of law; that a writ of injunction should not be used to take away property from one and give it to another; and that the writ of preliminary injunction operates only upon unperformed and unexecuted acts to prevent a threatened but nonexistent injury, or to prevent the defendant from committing further acts of dispossession against the plaintiff. However, the law has now been changed, and under Article 539 of the New Civil Code, a writ of preliminary mandatory injunction is now available to the plaintiff during the pendency of his action to recover possession."

It is to be stated in this connection, as could be gathered from the records of the instant case, that petitioner, prior to the issuance of the writ of preliminary injunction complained of, had been in possession of the land in dispute as administrator of the previous registered owner, Father Alcazar, who however sold the same to the Catholic Bishop of Nueva Caceres. The sale was contested by those who claimed to be the heirs of Father Alcazar, among them being herein petitioner, Ignacio A. Luna. The controversy reached the Supreme Court which upheld the validity of the sale (G. R. No. L–9914, December 19, 1957). Later on, or on September 1, 1958, the Bishop of Albay sold the same property to herein respondents Santos Yap and Lourdes Yap in whose name, the court below, acting upon a proper motion and after due hearing, ordered the issuance of T. C. T. No. T–112, after cancelling Original Certificate of Title No. O–10.

Indeed, respondent judge committed no abuse of discretion nor did he act in excess of his jurisdiction when he issued the order complained of, dated December 4, 1958. And if at all respondent judge incurred an error, the same could properly be assailed in an ordinary appeal, but

not in a special civil action like the present one which may be favorably entertained only when the requisites pointed out above are patently present.

Wherefore, the instant petition is hereby dismissed with costs against the petitioner.

IT IS SO ORDERED.

Dizon and *Cabahug, JJ.*, concur.

Petition dismissed.

[No. 21559–R. Abril 6, 1959]

EL PUEBLO DE FILIPINAS, querellante y apelado *contra* FEDERICO SABADO, ET AL., acusados y apelantes

DERECHO PENAL; ROBO; LA DOCTRINA EN PUEBLO CONTRA DE LEON, 49 PHIL., 437, ES INAPLICABLE; CASO DE AUTOS.—La apropiación por los acusados de cosas guardadas en dos distintas casas, mediante fuerza e intimidación, ejecutando al efecto actos separados de apropiación si bien en una misma ocasión constituye dos delitos de robo (Pueblo *contra* Baesa y otros, G. R. No. L–5190–5193, Abril 29, 1953) y no un solo delito de robo como contienden los acusados, invocando como base de su contención la causa de Pueblo *contra* De Leon, 49 Phil., 437, donde nuestro Tribunal Supremo declaró que el hurto de dos gallos en una sola casa y en una misma ocasión constituye un solo delito. La doctrina invocada no es aplicable al caso de autos porque los gallos estaban guardados en un mismo sitio y hubo una sola apropiación de los objetos hurtados, si bien estos pertenecian a dos dueños diferentes. Habida consideración, sin embargo, a que los dos delitos se incluyeron en una sola querella y aparentemente la intención del fiscal era acusar a los apelantes de un sólo delito, procede condenar a estos de un solo delito de robo (Pueblo *contra* Hamiana, G. R. Nos. L–3491–3493).

APELACIÓN contra una sentencia del Juzgado de Primera Instancia de Nueva Vizcaya. Masakayan, *J.*

Los hechos aparecen relacionados en la decisión del Tribunal.

Eficio B. Acosta, en representación de los acusados y apelantes.

El Procurador General Edilberto Barot y *el Procurador Pedro Ocampo,* en representación del querellante y apelado.

HERNÁNDEZ, *M.:*

Por algún tiempo antes del 17 de abril de 1955, Ciriaco Navarro y su familia tenían una casita en el sitio de Calapitag, barrio de Pinaripad, municipio de Aglipay, Nueva Vizcaya. A unos 10 metros de distancia estaba ubicada la casa de Elpidio Caliocalio, casado con Anatalia Navarro, hija ésta de Ciriaco Navarro. Un grupo de malhechores asaltaron las dos casas a eso de las 6:30 de la noche del 17 de abril de 1955. Cuatro días después se presentó ante el Juzgado de Paz de Aglipay una denuncia suscrita por el jefe de policía contra los aquí apelantes Federico Sabado, Buenaventura Vetriolo, Avelino Surat y un desconocido.

Elevada la causa al Juzgado de Primera Instancia después de los trámites de rigor, el fiscal provincial presentó una querella por robo contra los apelantes. En la querella sa alega que dos de los asaltantes estaban armados con armas de fuego y otro con un bolo. Vista la causa en su fondo, el Tribunal halló a los apelantes culpables del delito de robo en cuardrilla definido y castigado por el

párrafo 4° del artículo 294 del Código Penal Revisado en relación con el párrafo 5.° del artículo 295 del mismo Código, e impuso a los apelantes la pena de cuatro (4) años, dos (2) meses y un (1) día de prisión correccional a ocho (8) años y veintiún (21) días de prisión mayor por el robo cometido en la casa de los esposos Elpidio Caliocalio y Anatalia Navarro y otra pena idéntica por el robo cometido en la casa de Ciriaco Navarro.

Los apelantes apuntan varios supuestos errores cometidos por el Tribunal a *quo* de los cuales nos ocuparemos en el curso de esta decisión.

A eso de las 6:00 de la noche del 17 de abril de 1955 mientras Ciriaco Navarro y su familia estaban cenando en el balcón de la casa llamado vulgarmente en la localidad "bangsal" cuatro individuos se presentaron en el umbral de la casa. Componían la familia de Ciriaco Navarro, su esposa Fausta Respicio, las hijas de ambos, Engracia Navarro y Máxima Navarro, y un hijo llamado Santiago Navarro. También se encontraba en la casa accidentalmente una sobrina de los esposos llamada Cresencia Navarro cuya casa estaba al otro lado del río y en la tarde de autos había ido a la casa de sus tíos para pasar la noche en ella. Habían dos luces encendidas en la casa; una de ellas en el lugar donde estaban cenando Ciriaco Navarro y su familia. Los aquí apelantes fueron reconocidos por Engracia Navarro mientras estaban en el umbral. Ciriaco también reconoció a los apelantes y les invitó a cenar. Estos rehusaron la invitación diciendo que irían a la casa vecina y en efecto, se dirigieron a la casa de Elpidio Caliocalio. Terminada la cena, Ciriaco Navarro y su familia entraron en la pieza principal de la casa. En el entretanto, los apelantes Federico Sabado y Buenaventura Vetriolo entraron en la casa de Elpidio Caliocalio. Sabado estaba armado de una carabina y Vetriolo llevaba un arma de fuego más corta que una carabina y apuntando sus armas a los esposos Caliocalio, obligaron a éstos que bajaran de la casa. Anatalia Navarro al bajar de la casa llevó a su hijo llamado Robinson de un año de edad. Una vez en tierra Caliocalio vió al apelante Avelino Surat que estaba armado de un bolo. Los apelantes obligaron a los esposos a subir a la casa de Ciriaco Navarro seguidos de Sabado y Vetriolo, quedándose en tierre el apelante Avelino Surat y un compañero a quien Caliocalio no pudo identificar. Una vez en la casa de Ciriaco Navarro, los apelantes Sabado y Vetriolo obligaron a los moradores de la casa a agruparse en un rincón de la misma. Reunidos los miembros de la familia en esta forma, el apelante Vetriolo ordenó a Elpidio Caliocalio y a su suegro Ciriaco Navarro que el siguieran para hablar con él fuera de la casa. Fueron llevados ambos a la casa de Elpidio Caliocalio y

en esta ocasión el apelante Surat entró en la casa juntamente con el otro apelante Vetriolo. Una vez en la casa de Caliocalio, los apelantes Vetriolo y Surat obligaron a Ciriaco Navarro y a su yerno Elpidio Caliocalio que se tumbaran al suelo y luego los apelantes maniataron por detrás las manos de ambos. Acto seguido, los apelantes Vetriolo y Surat pidieron dinero de los dos. Elpidio Caliocalio y su suegro Ciriaco Navarro contestaron que no tenían dinero. Los apelantes Vetriolo y Surat les dieron de puntapiés diciendo que estaban mintiendo porque sabían que ambos habían vendido vacunos. Los apelantes pidieron a Elpidio Caliocalio que les entregara la llave de su baul amenzándole de muerte. Elpidio contestóque la llave del baul la tenía su esposa Anatalia Navarro que entonces se encontraba en la casa de su padre. El apelante Vetriolo al oír esto salió de la casa para sacar a Anatalia dejando a Surat en la casa de Elpidio Caliocalio. El apelante Vetriolo no tardó en volver con Anatalia Navarro a la casa de Elpidio Caliocalio. Sacó la llave de Anatalia y con ella abrió el baul de los esposos y se apoderó del dinero y alhajas que estaban dentro del baul. Vetriolo, después de abierto el baul, bajó de la casa de Elpidio Caliocalio y volvió a la casa de Ciriaco Navarro.

Surat por su parte se quedó en la casa de Elpidio vigilando a las personas que estaban dentro de la casa (pags. 95–96, t.n.t., Martinez y Dacusin).

Estos son los hechos que se desprenden de la declaracion de Elpidio Caliocalio sobre lo ocurrido dentro de su casa.

Estando aun Ciriaco Navarro en la casa de su yerno, Vetriolo que había vuelto a la casa de Navarro exigió dinero de Fausta Respicio y después de amenazarla de muerte, esta se vió obligada a entregar a Vetriolo la llave de su baul con la cual Vetriolo abrió el baul y se apoderó de la cantidad de ₱140.00 que estaba dentro del baul. Vetriolo estaba exigiendo más dinero y como Fausta insistía en que no tenía más dinero, Vetriolo dijo que iría a la otra casa para sacar al marido (Ciriaco Navarro) y así lo hizo.

Una vez devuelto Ciriaco Navarro en su casa por el apelante Vetriolo, éste exigió más dinero de los esposos mientras el apelante Sabado tenía su arma apuntada a Ciriaco Navarro y a los otros moradores de la casa. Vetriolo mientras exigía más dinero de Fausta Respicio preguntó por el importe de la venta de los vacunos y de un carabao de los esposos (pag. 57, t.n.t., Martinez y Dacusin), Fausta contestó que el dinero ya se había gastado por los estudios de un hijo. Debido a la actitud amenazadora de los apelantes Vetriolo y Sabado, Ciriaco Navarro aconsejó a su mujer que entregara el dinero. Fausta

Respicio cogió una almohada y entregó la mísma a Buenaventura Vetriolo, éste rompió la almohada y encontró dentro de la misma la cantídad de ₱300.00. No contento con esto, Vetriolo se apodero de los pendientes de Engracia Navarro y de Fausta Respicio avaluados en ₱100.00. Después de advertor a los moradores de la casa que no díeran cuenta del caso a las autoridades, Vetriolo y Sabado dejaron la casa de Ciriaco Navarro. Mientras los apelantes Vetriolo y Sabado estaban en la casa de Ciriaco Navarro, Surat que estaba en la de Elpidio Caliocalio para vigilar a los esposos, trató de abusar de la esposa de Elpidio Caliocalio y ésta empezó a gritar; debido a estos gritos Surat dejó la casa de los esposos.

Estos hechos se desprenden de las declaraciones prestadas por Fausta Respicio, Engracia Navarro y del mismo Caliocalio.

Al día siguiente Caliocalio dió cuenta del caso a las autoridades locales y las declaraciones de Ciriaco Navarro, Fausta Respicio, Elpidio Caliocalio y Anatalia Navarro fueron tomadas bajo juramento (Exhs. "D", "A" y "F").

Los apelantes contienden que no han participado en los robos cometidos en las casas arriba apuntadas. El apelante Sabado con sus testigos Isidro Sabado y Bonifacio Galinato trató de probar que en la noche de autos, no salió de su casa. A eso de las 6:00 de la tarde Isidro Sabado, un pariente lejano del apelante, a requerimiento del teniente del barrio había acudido a la casa del apelante Sabado para comprar del apelante un cerdo y en efecto pudo comprarlo por ₱10.00. Estando Isidro Sabado en la casa del apelante Federico Sabado a eso de las 6:30 Galinato llegó con un carabao del apelante Sabado que aquél había cogido destrozando su sembrado. Galinato solamente permaneció unos cinco minutos en la casa del apelante Sabado.

Los otros apelantes Vetriolo y Surat trataron de probar que invitados por Flora Vetriolo, hermana del apelante Vetriolo, asistieron a un bautizo en Tres Reyes que tuvo lugar en la noche de aquél día habiendo actuado Flora Vetriolo como una de las madrinas. El padre de la criatura se llama Bienvenido Besares. Flora Vetriolo invitó a su hermano Buenaventura Vetriolo y a Avelino Surat para que asistieran al bautizo como músicos porque Vetriolo y Surat saben tocar instrumentos musicales de cuerda. Vetriolo y Surat salieron del barrio de Dibul de donde son residentes a eso de las 7:00 y permanecieron en la casa de Besares hasta las 12:00 de la noche. Para corroborar el testimonio de los apelantes Vetriolo y Surat sobre la presencia de los mismos en el barrio de Tres Reyes, presentaron como testigos a Flora Vetriolo y a Bienvenido Besares quienes declararon que los apelantes estuvieron en la referida casa en la noche de autos.

El apelante Vetriolo intentó, además, probar que hacia el año 1954 él había tenido relaciones amorosas con Engracia Navarro pero en dicho año o a principios del año 1955 Engracia Navarro dió a luz a una criatura siendo el padre de la misma otro varón. Por este motivo el cortó sus relaciones con Engracia Navarro y cree que es objeto de persecución en esta causa. Debido a esta imputación, hemos leido detenidamente la voluminosa transcripción de las notas en esta causa y después de un minucioso analisis de las pruebas presentadas por la acusación, entendemos que dichas pruebas establecen satisfactoriamente la culpabilidad de los apelantes.

Caliocalio no tenía ningún motivo para imputar un delito bastante grave a los aquí apelantes. Conocía a Sabado porque es del mismo barrio y la casa de éste solamente dista unos 200 metros de la de Caliocalio. Conocía a Surat antes de la fecha de autos porque éste había sido policía del municipio y conocía de cara a Vetriolo, si bien no había tratado al mismo antes de la fecha de autos. No hay nada en autos algún detalle que pueda empañar la credibilidad de este testigo; tampoco existen en autos detalles que desacrediten la credibilidad de Fausta Respicio.

Con respecto a la declaración de Engracia Navarro, si bien en ocasiones pretende fijar o indicar fechas, como cuando conoció a ciertas personas, notamos que en ocasiones relaciona la fecha indicada por ella con un acontecimiento local. Cuando afirmó que conoció y trató personalmente al apelante Vetriolo en 24 de marzo del 1954 explicó que se acordaba de la fecha porque era la fiesta del barrio y en dicha ocasión Vetriolo, siendo un joven y soltero, subió a su casa para visitarla. Esta es una costumbre muy generalizada en los barrios y no hay nada extraño que tal hecho haya ocurrido en la forma declarada por Engracia Navarro. Engracia Navarro negó que hubiese tenido relaciones amorosas con el apelante Vetriolo y no creemos que ha habido tales relaciones porque la declaración de Vetriolo sobre el particular es singular, sin ninguna corroboración. Asumiendo que realmente hubo tales relaciones y Engracia Navarro cometió una insólita infidelidad yaciendo con otro varón que no era su novio, en este caso el apelante Vetriolo sería el ofendido con motivos para fraguar una venganza y no la supuesta culpable de la infidelidad.

Se contiende por los apelantes que Engracia Navarro ha incurrido en varias inconsistencias y es indigna de crédito. Es cierto que en el curso de su declaración Engracia Navarro se rectificó varias veces pero una lectura de toda la transcripción de las notas demuestra que muchas de las preguntas dirigidas a esta testigo eran capcio-

sas y no pocas preguntas abarcan varios extremos. Bajo estas circunstancias no es extraño que las contestaciones de la testigo son a veces ambiguas y vacilantes, pero entendemos que el conjunto de su declaración, particularmente en extremos esenciales, es satisfactoria y corrobora las declaraciones de los otros testigos como así lo estimó el Tribunal *a quo*.

Por otro lado, la coartada presentada por los apelantes no es nada satisfactoria ni convincente. Como ya hemos indicado, Isidro Sabado es pariente de Federico Sabado, y el otro testigo Bonifacio Galinato permaneció sólo unos cinco minutos en la casa del apelante Sabado.

Con respecto a la coartada de los otros acusados, notamos del mismo testimonio de los testigos de la defensa que el grupo de Flora Vetriolo compuesto en su mayoría de niñas, salió del barrio de Dibul una hora antes que los apelantes Vetriolo y Surat. El grupo de Flora Vetriolo según los mismos testigos de la defensa, permaneció en la casa de Besares hasta las 4:00 de la madrugada mientras que los apelantes Vetriolo y Surat se adelantaron en volver a Dibul a eso de las 12:00 de la noche. El barrio de Dibul dista unos cinco kilometros según los mismos testigos de la defensa, del barrio de Pinaripad donde están situadas las casas de los ofendidos y cuatro kilometros de Tres Reyes. Aun en el supuesto de que realmente los dos apelantes Buenaventura Vetriolo y Avelino Surat estuvieron en la casa de Besares en la noche de autos, es probable que acudieron a tal lugar después de cometido el robo el la ocasión de autos.

Se contiende por los apelantes que el Tribunal *a quo* erró al condenarles del delito de robo en cuadrilla. La contención es meritoria puesto que, como ya queda indicado, en la querella se dice que solamente tres de los asaltantes estaban armados y no procede condenar a los acusados de un delito mayor que no está descrito en la querella. Las pruebas demuestran, sin embargo, que los cuatro asaltantes estaban armados y esta circunstancia, si bien no puede considerarse como una circunstancia cualificativa, debe ser, sin embargo, considerada como una circunstancia agravante (Pueblo *vs.* Pollado, 60 Phil., 610). También ha concurrido en la comisión del delito la circunstancia agravante de morada (Pueblo *vs.* Sebastian, 47 O.G. Núm. 8, Pag. 4151).

Se contiende por los apelantes que los actos alegadamente cometidos por los mismos constituyen un solo delito de robo puesto que hubo solamente una intención criminosa y el robo se ha cometido en dos casas contiguas. Cita a este efecto la causa de Pueblo contra De Leon, 49 Phil., 437 donde nuestro Tribunal Supremo declaró que el hurto de dos gallos en una sola casa y en una misma ocasión cons-

tituye un solo delito. La doctrina invocada no es aplicable al caso de autos porque los gallos estaban guardados en un mismo sitio y hubo una sola apropiación de los objetos hurtados, si bien estos pertenecían a dos dueños diferentes. En el caso de autos, las cosas robadas no estaban guardadas en una misma casa y los apelantes ejecutaron actos separados de apropiación. Estrictamente, los apelantes cometieron dos delitos distintos (Pueblo *vs.* Baesa y otros, G. R. L–5190–5193, abril 29, 1953).

Hemos indicado, sin embargo, que solamente se presentó una denuncia contra los apelantes y la intención del jefe de policía, al parecer, era acusarles de un solo delito. El fiscal provincial sólo presentó una querella y de esta no se desprende claramente la intención de acusar de dos delitos separados, si bien la querella habla de Ciriaco Navarro y Elpidio Caliocalio como ofendidos. Es verdad que los acusados no han impugnado esta querella por acusar de dos delitos probablemente debido a que la defensa no creía que la intención de la acusación era acusar a los apelantes de dos delitos.

La situación en la presente causa es parecida a la discutida en el asunto de Pueblo contra Hamiana, et al., G.R. Núms. L–3491, 3492 y 3493 donde nuestro Tribunal Supremo en parte dijo lo siguiente:

* * * "The Solicitor General contends that in criminal case No. 1255, two separate offenses of robbery in band were charged; that the evidence shows that the house of Fortunata Nobleza was different and separate from that of Porfirio Lorenzo; and that the offenses were committed on different occasions. The appellants not having objected to the sufficiency of the information or to the evidence presented, it is recommended that they be convicted of two separate offenses of robbery in band. We are inclined to take the view favorable to the appellants. The appellants naturally would not have objected to the information which charged only one offense of robbery, or to the evidence presented which was not explicit in pointing out that the testimony of a certain witness was for one offense charged in one or more informations." * * * (Pags. 4 y 5 de la Decisión)

En la referida causa, no obstante que los robos en las dos casas fueron perpetrados en dos diferentes ocasiones, el Tribunal Supremo considero los hechos delictivos como un solo acto para los fines de la pena que se debe imponer a los apelantes.

Por otro lado, Anatalia Navarro la esposa de Elpidio Caliocalio, no declaró en la vista de esta causa y la declaración del marido (Caliocalio) no es satisfactoria con respecto al valor y desaparición de los objetos en su casa como se puede apreciar de una porción de su declaración:

* * *

"Q.—And you also stated that they took all what they want *but that you only knew what was taken when you wife told you* the articles that were taken, is it not?

A.—Yes, sir.
Q.—And your wife told you that one of those which were taken was your cash money in the amount of ₱35.00, is it not?
A.—Yes, sir.
Q.—Did your wife tell you in what denominations was this ₱35.00?
A.—No, sir, because I did not ask for it.
Q.—Your wife also told you that one pair of earrings, costing forty pesos, was taken by those robbers on April 17, 1955?
A.—Yes, sir.
Q.—And she also told you that a ring worth twenty pesos was also taken by the robbers, is it not?
A.—Yes, sir
Q.—And the last item which she told you was clothings valued at fifty pesos, is it not?
A.—Yes, sir.
Q.—And in truth and in fact you did not know what these clothings valued at ₱50.00 were, is it not?
A.—No, sir, only two pants are what I know of the clothings taken." * * *

* * *

"Q.—You did not actually see these articles you have enumerated as taken by the robbers on April 17, 1955, *but you came to know that these were the articles taken because it was what your wife told you, is it not?*
A.—Yes, sir, because I was not able to witness it because we were lying in a prone position and my hands were tied." * * * (Pag. 108, t.n.t., Martinez y Dacusin; las cursinas son nuestras)

En esta porción de la declaración de Elpidio Caliocalio se desprende claramente que debido a la posición en que se encontraba, Caliocalio no se dió cuenta de los objetos sacados por Vetriolo en su casa y solemente se enteró de los efectos robados por la información de su esposa. Esta declaración es de referencia y es de escaso valor probatorio (People *vs.* Cabral and Mercado, G. R. No. 29412).

Bajo las circunstancias arriba apuntadas preferimos considerar los actos querellados como un solo delito. El párrafo 5.° del artículo 294 del Código Penal Revisado fija la pena de prisión correccional en su grado máximo a prisión mayor en su grado medio para el delito querellado. Habiendo concurrido dos circunstancias agravantes se debe imponer la pena en su grado máximo. Para los fines de la sentencia indeterminada la pena debe ser de arresto mayor en su grado máximo a prisión correccional en su grado medio, o sea, de cuatro (4) meses y un (1) día de arresto mayor a cuatro (4) años y dos (2) meses de prisión correccional. La pena mínima impuesta por el Tribunal *a quo* excede en un (1) día la cual debe ser eliminada. El grado máximo está dentro de la escala prevista por la ley.

POR LAS CONSIDERACIONES arriba expuestas, se modifica la sentencia de que se apela en el sentido de que se condena a los apelantes a cuatro (4) años y dos (2) meses de prisión correccional, como mínima, a ocho (8) años

y veintiún (21) días de prisión mayor como máxima, a indemnizar a los esposos Ciriaco Navarro y Fausta Respicio la cantidad de ₱540.00, sin prisión subsidiaria dada la naturaleza de la pena, y a pagar las costas del juicio. Modificada la sentencia en este sentido se confirma la misma en todo lo demás.

ASI SE ORDENA.

Gutiérez David, Pres. y *Amparo, M.*, están conformes.

Se modifica la sentencia.

[No. 22316-R. March 21, 1959]

PERFECTO LLERENA, plaintiff and appellee, *vs.* THE CHAIRMAN, LAND TENURE ADMINISTRATION and JUANA PARAON, defendants and appellants.

1. LAND TENURE ADMINISTRATION; JURISDICTION OF COURTS OF FIRST INSTANCE OVER LAND TENURE CASES.—Pursuant to Section 44 of R. A. No 296, Courts of First Instance have jurisdiction to try and decide land tenure cases involving possession of real property and enforcement of contract. There is no law requiring that before the courts of justice can acquire jurisdiction over this or similar matters, the parties should first exhaust all administrative remedies or appeal from the decision therein to the President of the Philippines. Section 6 (4) of R. A. No. 1400 merely authorizes the Land Tenure Administration to promulgate rules and regulations that may be necessary for the implementation of the said act; but certainly this authority cannot and should not be interpreted to include the issuance of any administrative order that would, in effect, curtail or diminish the courts' jurisdiction, a power expressly reserved and vested upon Congress by the Constitution. It is already well settled that executive orders of the President or administrative orders of department secretaries are only valid and binding if they are in accordance with existing laws (Olsen & Co. *vs.* Aldanese and Trinidad, 43 Phil. 259, 265; Rodriguez Sr. *vs.* El Tesorero de Filipinas, et al; Barredo, etc. *vs.* the Commission on Elections, et al., G. R. Nos. L-3054 and L-3056, Sept. 16, 1949; Chinese Flour Importers Asso. *vs.* PRISCO, G. R. No. L-4465, July 12, 1951.)

2. ID.; COURT ACTION FOR ANNULMENT OF DECISION OF THE LAND TENURE ADMINISTRATION; APPEAL TO THE PRESIDENT NOT A PREREQUISITE.—Land Tenure Administration Order No. 1 does not require the appeal of a decision of the chairman of the Administration to the President as a condition precedent to bringing to the courts of justice an action for the annulment of the decision. It merely provides that an appeal from the decision to the President shall lie within a period of thirty days.

3. ADMINISTRATIVE LAW; RULE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES, APPLICABILITY.—The rule of exhaustion of administrative remedies applies only to an action taken by an administrative official concerning public lands and not when it concerns private property.

APPEAL from a judgment of the Court of First Instance of Manila. Gatmaitan, *J.*

The facts are stated in the opinion of the Court.

David F. Barrera, for defendant and appellant Juana Paraon.

Lomuntad & Barbosa, Legal Staff, LTA, for defendant and appellant Chairman, LTA.

Salva & Gatdula, for plaintiff and appellee.

CABAHUG, *J.:*

On June 5, 1957, Perfecto Llerena initiated this action in the Court of First Instance of Manila against Juana

Paraon and the Chairman of the Land Tenure Administration, praying that the decision rendered by the latter defendant in LTA case No. 187 (annex B of the complaint) and the deed of sale in favor of its co-defendant, which deed may have been the result of the aforementioned decision, be declared null and void; and for the payment of damages and the costs. After defendants filed their answers, wherein they advanced affirmative defenses, and after proper trial, the lower court rendered its decision declaring the decision of the Land Tenure Administration (exhibit 7) null and void, and ordering defendants to comply with the contract exhibit A.

It appears that in April, 1951, the Republic of the Philippines, represented by the Director of Lands, offered to sell upon application to Perfecto Llerena lot No. 27, block No. 24 of Nuestra Señora de Guia Estate, containing an area of 161 square meters for the price of ₱1,771.00, ten per cent of which amount was payable upon the execution of the agreement and the balance payable in equal monthly installments for ten years. Llerena accepted the offer and after signing and acknowledging together with the Director of Lands the corresponding deed (exhibit A), he paid the ten per cent of the purchase price, and subsequently and religiously, the monthly installments agreed upon (exhibits B, B–1 to B–40). Exhibit A was approved by the Secretary of Agriculture and Natural Resources on April 6, 1951 (last page, exhibit A).

On the strength of exhibit A, Llerena filed a complaint dated April 5, 1954, with the Court of First Instance of Manila, docketed as Civil Case No. 22510, against Jose Mallari and Manuel Sadie, praying that therein defendants be ordered to vacate and surrender to therein plaintiff the possession of the portion of lot No. 27 which they were occupying (exhibit E). Being the owner of the house where defendant Sadie was living, Juana Paraon was permitted to intervene. In their answer, defendants therein alleged that their houses were erected on the land in question since 1945; that they have prior right to purchase the land; and that they had applied for its purchase, having deposited a certain amount with the defunct Rural Progress Administration. In counterclaim, they prayed for the payment of damages and costs. In deciding Civil Case No. 22510 on May 14, 1956, the court said:

"During the hearing, plaintiff offered as Exhibit A a photostat of agreement to sell the lot in question, executed on April 6, 1951 by the Director of Lands and plaintiff . . .

"The evidence satisfactorily shows that plaintiff has perfect right to the possession of Lot No. 27, Block 24, in PCS–2561, containing 161 square meters, located at Yacal Street, Manila, being purchaser on installment of said land, and that, without any

right to do so, defendant Manuel Sadie occupies 8.100 square meters, and intervenor Juana Paraon, 21.4350 square meters, of said lot of plaintiff, as clearly indicated in the plan of said lot submitted by the Chief Surveyor of the Bureau of Lands, marked as Exhibit B.

"WHEREFOE, judgment is hereby rendered, ordering defendant Manuel Sadie and intervenor Juana Paraon, or any one claiming under either or both of them, forthwith to vacate the portions of the land of plaintiff respectively occupied by them, and to pay, jointly and severally, to plaintiff the sum of ₱200.00 as attorney's fees, and the costs of this action.

"Defendants' counterclaim is dismissed" (pp. 2–3, exh. E–1).

Instead of appealing from this judgment, Juana Paraon went to the Land Tenure Administration (which, upon its organization after the approval of R. A. No. 1400 on September 9, 1955, took over the functions, powers and duties of the abolished Division of Landed Estates of the Bureau of Lands) and the Administration, on October 22, 1956, conducted an investigation of LTA Case No. 187 entitled Juana Paraon, protestant, *vs.* Perfecto Llerena, respondent. During the investigation the latter appeared through counsel for the sole purpose of impugning the jurisdiction of the Land Tenure Administration (exhibit 6, p. 1). And on March 9, 1957, its chairman rendered the decision herein complained of, the dispositive part of which reads:

"WHEREFORE, decision is hereby rendered in the following manner: that upon payment of the required amount in accordance with existing rules and regulations, a deed of sale or contract to sell, as the case may be, is ordered executed in favor of Protestant Juana Paraon, covering the southern portion of Lot No. 27, Block 24, Pcs–2561, occupied by her house or so much thereof, with an area of 61 square meters, and a new contract executed in favor of respondent Perfecto Llerena, to cover the remaining northern portion of same lot with an area of 100 square meters, in lieu of and superseding Agreement to Sell No. 06372, which adjudication is indicated on the sketch at the back thereof; PROVIDED FURTHER, that recomputation of the price of this lot is also ordered so as to determine the correct amount due from the herein parties or refund of the excess that may be found on the price of the portions adjudicated to either of the parties." (p. 4, exhibit 7).

The affirmative defense alleged in their answer by Juana Paraon and the chairman of the Land Tenure Administration are again raised in this appeal and cited in the following assignment of errors:

1. The lower court erred in taking cognizance of the complaint in the above-entitled case, as it had no jurisdiction thereon, inasmuch as plaintiff-appellee did not exhaust first all administrative remedies before coming to court;

2. The lower court erred in holding that the Land Tenure Administration has no power to cancel or annul or modify agreement to sell (Exhibit "A"), and further erred in considering that Exhibit "7" null and void; and

3. The lower court erred, on the assumption that it could take cognizance of the case, in not considering the evidence of the defendants-appellants, and on the basis thereof, in not granting the relief prayed for by them.

As appellants themselves recognize, jurisdiction of the courts is conferred by substantive law and not by the expressed or implied will of the parties. Hence, pursuant to Section 44 of R. A. No. 296, the lower court had the jurisdiction to try and decide the case at bar, because it involves possession of real property and the enforcement of contract exhibit A, the obligation arising therefrom being threatened to be impaired by the unilateral action of one of its signatories, appellant chairman of the Land Tenure Administration through its predecessor the abolished Division of Landed Estates of the Bureau of Lands. There is no law requiring that before the courts of justice can acquire jurisdiction over this or similar matters, the parties should first exhaust all administrative remedies or appeal from the decision exhibit 7 to the President of the Philippines. Section 6 (4) of R. A. No. 1400 merely authorizes the Land Tenure Administration to promulgate rules and regulations that may be necessary for the implementation of the said act; but certainly this authority cannot and should not be interpreted to include the issuance of any administrative order that would, in effect, curtail or diminish the courts' jurisdiction, a power expressly reserved and vested upon Congress by the Constitution. It is already well settled that executive orders of the President or administrative orders of department secretaries are only valid and binding if they are in accordance with existing laws.

"Hence, it must follow that any rules or regulations which are not within the scope of the Act are null and void." (Olsen & Co. *vs.* Aldanese and Trinidad, 43 Phil. 259, 265.)

"Executive Orders which are repugnant to the Constitution should not be given permanent life, opening the way to practice which may undermine our constitutional structure." (Rodriguez Sr. *vs.* El Tesorero de Filipinas, et al; Barredo, etc. *vs.* the Commission on Elections, et al., G. R. Nos. L-3054 and L-3056 ,Sept. 16, 1949.)

"Where the provisions of Executive Order are inconsistent with or repugnant to the provisions of the Act, the mandate of the Act must prevail and must be followed." (Chinese Flour Importers Association *vs.* PRISCO, G. R. No. L-4465, July 12, 1951)

As a matter of fact, Land Tenure Administration Administrative Order No. 1 does not require the appeal of a decision of the chairman of the Administration to the President as a condition precedent to bringing to the courts of justice an action for the annulment of the decision. It merely provides that an appeal from the decision to the President shall lie within a period of thirty days.

While it is true that in the cases cited by appellants the Supreme Court laid down the doctrine that if an aggrieved party failed to appeal from the decision of the Director of Lands to the Secretary of Agriculture and Natural Resources, he cannot seek relief in the courts of justice, the said doctrine was not enjoined by law, but rather it was established as a matter of expediency.

"The purpose behind the policy of requiring a party to first exhaust all administrative remedies before resorting to court would seem to be merely to provide 'an orderly procedure which favors a preliminary administrative shifting process, particularly with respect to matters peculiarly within the competence of the administrative authority.'" (Santiago, et al., *vs.* Cruz, et al., G. R. Nos. L-8271-8272, Dec. 29, 1955, citing 42 Am. Jur., 581.)

Besides, this ruling of exhaustion of administrative remedies applies only to an action taken by an administrative official concerning public lands and not when it concerns private property. It is, therefore, not applicable to the present case, because like the Tambobong Estate, Nuestra Señora de Guia Estate, of which lot No. 27 is part, is of private ownership although it was acquired by the government for the purpose of subdividing it into small home lots for resale to private individuals, pursuant to Commonwealth Act No. 539 (Santiago, et al. *vs.* Cruz, et al., *supra.*)

In the cases of Marukot, Baltazar and Baisa *vs.* Jacinto and the Director of Lands, 52 Off. Gaz. 213, the subject matters of the actions were lots Nos. 35-B, 35-D and 35-E, which were portions of Lot No. 35, Block No. 12 of the Tambobong Estate. Defendants-appellants in these cited cases contended that plaintiffs-appellees should have first appealed from the decision of the Bureau of Lands to higher administrative authorities, and that their failure to do so rendered the said decision final, thus depriving the court of the jurisdiction to take cognizance of the cases aforecited. In passing upon this issue, the Supreme Court said:

"It was not necessary for the appellees to first appeal the decision of the Bureau of Lands (which took over the functions of the former Rural Progress Administration) to higher administrative authority before instituting the present action in the Court of First Instance to annul said decision, because the matter in controversy did not fall within the purview of the Public Land Act, and there is no pretense that the alleged administrative remedy has been made a condition precedent to the filing of a judicial action."

And in the case of Santiago, et al. *vs.* Cruz, et al., *supra,* which also concerns a lot of the same estate, the Supreme Court said:

"With regard to the application of Realeza Cruz to purchase Lot 19, Block 16, the same was unopposed, even by Francisco Samonte,

whereupon an agreement to sell was executed by the Director of Lands in favor of Realeza on April 14, 1952. Samonte, apparently informed of the transaction, refused to pay the rent to Realeza, and having likewise refused to vacate the lot notwithstanding repeated demands, Realeza filed an ejectment case against him in the Justice of the Peace Court of Malabon, Rizal. It was while this ejectment case was awaiting decision that Samonte brought a court action claiming priority to buy the lot he was occupying and asking for the annulment of the sale made thereof to Realeza by the Director of Lands. He also asked for an injunction against the Justice of the Peace.

"The first issue to be determined is whether these two cases should be dismissed for lack of sufficient cause of action on the part of the plaintiffs to press them in court in view of their failure to appeal to the Secretary of Agriculture and Natural Resources to obtain a reversal of the decision of the Director of Lands, or to exhaust the remedies open to them in the administrative branch under the law and precedents on the matter.

"It is contended by appellees that such expediency is not necessary not only because there is no law expressly requiring it to confer jurisdiction upon the court but would only entail unnecessary delay which would redound to the detriment of appellees who are much desirous to own a piece of land they can call their own. While there are precedents which hold the view that before a litigant can bring a matter to court which has been passed upon by the Director of Lands it is necessary that he first exhaust all the remedies in the administrative branch of the government, we find no law expressly requiring such a prerequisite before the courts could acquire jurisdiction. That ruling would seem merely to apply to an action taken by an administrative official concerning public lands and not when it concerns private property."

At first sight it may be considered that these rulings have been impliedly abandoned by virtue and in favor of one in Lubugan, et al. *vs.* Castrillo, et al., G. R. No. L-10521, May 29, 1957. However, the ruling of the Supreme Court in this last cited case should not be considered as a reversal of the rulings above quoted and should not be applied to the case at bar, because this instant case involves the enforcement of a contract and the inchoate title of ownership and possession of lot No. 27, which was not the situation in the Lubugan *vs.* Castrillo case wherein the action was for certiorari, injunction and damages. Besides, in the instant case, before the Land Tenure Administration unilaterally rescinded the contract exhibit A by virtue of its decision exhibit 7, there was already a final and executory decision rendered by the Court of First Instance of Manila, declaring that herein plaintiff-appellee had the right to purchase the entire lot in question of 161 square meters, and ordering appellant Paraon to vacate it. To hold otherwise would be tantamount to undermining the foundation of the democratic system of our government by allowing an instruentality of the Executive Department to reverse a valid and final decision rendered by a branch of the Judicial Department.

It is true that appellant Land Tenure Administration, not being a party in Civil Case No. 22510, cannot be bound by the judgment rendered therein by the Court of First Instance of Manila. Indeed, this appellant could not be made a party in that case because at the time of the filing of the complaint in April, 1954, and when the judgment was rendered on May 14, 1956, the aforecited appellant did not as yet show any sign that it would rescind or resolve exhibit A without the consent of appellee. Displaying an unpardonable apathy and negligence, the defunct Landed Estates Division and later its successor herein appellant Land Tenure Administration, did not take any action on the complaint (exh. 5) allegedly filed by appellant Juana Paraon in October, 1953, until the above numbered civil case had been finally decided. But if this final and executory decision of the court cannot, technically speaking, bind appellant Land Tenure Administration, this instrumentality is bound to respect and comply with its commitment and obligation as stated in exhibit A, to wit: upon full payment of the stipulated price, to execute a sufficient deed of sale of the whole lot No. 27, Block No. 24 of Nuestra Señora de Guia Estate, with an area of 161 square meters. Granting *arguendo* that appellee failed to comply with his obligations arising from exhibit A, or that he has violated any condition thereof—which is not the case as will be demonstrated below—such failure or violation does not authorize appellant Land Tenure Administration to rescind or cancel agreement exhibit A, acting as party and Judge at the same time. It should have resorted to a court action to annul or resolve said agreement on the ground that appellee made a false statement in his application (exh. 1) to purchase the lot in question.

"The defendant could not, by himself alone and without judicial intervention, resolve or annul the agreement. Under article 1124 of the Civil Code (now article 1191, new Civil Code), the right to resolve reciprocal obligations, in case one of the obligors fail to comply with that which is incumbent upon him, is deemed to be implied. But that right must be invoked judicially; for the same article also provides: 'The court shall decree the resolution demanded, unless there should be grounds which justify the allowance of a term for the performance of the obligation.'" (Escueta *vs.* Pando, 42 Off. Gaz. 2759, 2762.)

"A contract, such as a contract of lease with an option to purchase, could not and cannot be resolved by one party without judicial decree to afford the other party an opportunity to be heard.

* * *

"In order to resolve or cancel a contract or a reciprocal obligation by reason of or for such breaches, a judicial action must be brought to secure the resolution of the contract." (The Republic of the Philippines *vs.* Hospital San Juan de Dios, 47 Off. Gaz. 1833, 1834.)

Appellants aver that appellee made a false statement in his application to purchase, duly verified on October 5, 1950, when he stated in paragraph 5 thereof that there was no other occupant of the lot applied for. This statement is not false, for according to appellee's complaint exhibit E, it was not until 1951 that Jose Mallari and Manuel Sadie or his mother Juana Paraon encroached on lot No. 27 by constructing additions to their respective houses erected on adjoining lots. Although a mere allegation in the complaint filed by appellee in Civil Case No. 22510, this should now be considered as an established fact, for as stated elsewhere in this decision, that case was decided in favor of herein appellee and against herein appellant Paraon, who was ordered to vacate that portion of the lot in question which she had illegally occupied. And the fact that Paraon's house, before the additional construction, was located on a lot other than the disputed one, can be assumed from the following part of her letter (exh. 5) to the Director of Lands:

"It may be mentioned in passing that she is an old resident of the City of Manila and has not acquired any lot of her own, although she has applied one in this Estate but unfortunately missed one when a road was cut to her assigned portion."

This is further proven by appellant Paraon's exhibit 3 which is a receipt of a deposit of ₱20.00 not for lot No. 27 but for "Homesite Lot, Nuestra Señora de Guia, Tondo, Manila," and exhibits 4–A and 4–B which are receipts for rentals of lot No. 1517.

In the light of the foregoing, we are of the opinion and so hold that the lower court did not commit any of the errors assigned by appellants in their brief. Accordingly, the appealed judgment is hereby affirmed, without special pronouncement as to the payment of the costs.

IT IS SO ORDERED.

Dizon and *Peña, JJ.*, concur.

Judment affirmed.

[No. 17316-R. March 13, 1959]

FAUSTO H. ARIMAS, plaintiff and appellant, *vs.* JOVITO ARIMAS, defendant and appellee

1. CONTRACTS; SALE; CONSIDERATION.—It is not normal human behavior for parties to a contract of sale to execute a deed of sale with a settled consideration and later agree on a further consideration. The consideration is generally agreed upon as a whole even if it consists of several parts, and even if it is contained in more than one instrument. Otherwise, there would be no price certain, there would be no meeting of the minds as to the consideration, and the contract of sale can not be perfected. (See Articles 1445 and 1450, Spanish Civil Code; Articles 1458 and 1475, new Civil Code).

2. ID.; REFORMATION OF INSTRUMENTS; COURTS MAY CONSTRUE CONTRACTS.—Our law on the reformation of instruments is of common law origin. In jurisdictions, like our, where courts are both of law and of equity (see Rustia *vs.* Franco, 41 Phil. 280), a court may construe a contract, treat it as reformed, and render proper judgment on the basis thereof. " . . . . in jurisdictions in which the distinctions between law and equity are abolished, or in which both forms of relief are administered by the same court, in an action at law upon an instrument the court may in a proper case *construe the contract as it was intended by the parties, or supply matters omitted either by mutual mistake or fraud, and render a proper judgment on the basis thereof, just as if there had been first a reformation of the contract. The judgment may confer only the final legal remedy, the preliminary equitable relief being assumed as a prerequisite, but not in terms awarded*" (45 Am. Jur. 589).

APPEAL from a judgment of the Court of First Instance of Negros Occidental. Teodoro, Sr. *J.*

The facts are stated in the opinion of the Court.

Parreño, Aguliar & Banzon, for plaintiff and appellant.

Arsenio Al. Acuña, Jacinto E. Evidente and *Jacinto Evidente, Jr.,* for defendant and appellee.

CASTRO, *J.:*

This is an action for specific performance and damages.

The plaintiff Fausto Arimas was the owner of the hacienda Ubay-Sumag consisting of lots 154 and 155, cadastral survey of Murcia, Negros Occidental, with an area of 111.69 hectares, more or less, and a sugar quota of 2,841 piculs.

On September 30, 1947, Fausto leased the said hacienda to his nephew Jovito Arimas, the defendant, at a monthly rental of ₱200 (exhibit H). This lease was terminated on June 2, 1950. Although the terms of the lease are not disputed, the parties cannot agree on the total of the rentals that have been paid on account of the lease up to the time it was terminated. Fausto claims that the sum of ₱2,803 still remains unpaid; Jovito alleges that all rentals have been paid.

On June 2, 1950, Fausto sold the hacienda to Jovito. The main issue in this case concerns the consideration for the said sale. Fausto claims that the consideration consists of the following (1) Jovito is to pay him the sum of ₱25,000, besides paying Fausto's indebtedness to the Lizares & Co., Inc.; and (2) Jovito is to pay him a monthly pension of ₱200, and one-fifth (1/5) of the annual net profit derived from the said hacienda as long as he (Fausto) lives (exhibit G), Jovito, on the other hand, alleges that the sum of ₱25,000 already includes the total indebtedness of Fausto to the Lizares & Co., Inc. in the amount of ₱19,974.39, and, in support of this allegation, points to the statement of the consideration in the deed of sale (exhibit A). Fausto however maintains that the statement of the consideration in the deed of sale (exhibit A) was made through fraudulent misrepresentation.

Concerning the payment of a monthly pension of ₱200, and one-fifth (1/5) of the annual net profit derived from the said hacienda as long as Fausto lives (exhibit G), Jovito specifically denies in his amended answer that it is a part of the consideration for the sale of the said hacienda, but in his brief he admits that it is an additional consideration (defendant-appellee's brief, p. 4). There is no controversy as to the terms of the supplemental contract (exhibit G) which provides for it. The controversy is on the amounts to be paid under the said supplemental contract.

Fausto also claims moral damages, alleging that as a consequence of the fraudulent misrepresentation perpetrated by Jovito and of the failure of Jovito to pay him the consideration agreed upon, he suffered from serious anxiety and much mental anguish, resulting in several strokes that reduced him to a bedridden paralytic. Jovito specifically denies this claim.

In his amended answer, Jovito interposes a counterclaim for damages and attorney's fees in the total sum of ₱41,660, all of which are specifically denied by Fausto.

After trial, the lower court rendered judgmnet as follows:

"WHEREFORE, judgment is hereby rendered dismissing the complaint filed herein and sentencing the plaintiff to pay the defendant the following:

"1. Twelve Thousand Four hundred and Sixty Pesos (₱12,460.00) representing defendant's counterclaim above specified;

"2. Three Thousand Pesos (₱3,000.00) as moral damages;

"3. Two Thousand Pesos (₱2,000.00) as attorney's fees;

"4. To reimburse the defendant the sum of Two Thousand Four Hundred (₱2,400.00) representing the premium paid to the People's Surety & Insurance Company; and lastly

"5. To pay the costs of this action."

In this appeal Fausto contends that the lower court erred:

"1. In not holding that the defendant-appellee has the obligation to pay the plaintiff-appellant ₱25,000.00 as part of the purchase price of Hda. Ubay-Sumag.

"2. In not holding that the defendant-appellee is liable to the plaintiff-appellant for moral damages.

"3. In not holding that the defendant-appellee has the obligation to pay to the plaintiff-appellant the sum of ₱200.00 as a monthly pension from September 1954 and in not ordering the defendant-appellee to execute a sufficient security for the payment of the monthly pension of ₱200.00 in the future.

"4. In not holding that the defendant-appellee has the obligation to pay to the plaintiff-appellant ₱5,952.19 more on account of one-fifth (1/5) of the net profits derived from Hda. Ubay-Sumag from June 3, 1950.

"5. In not holding that the defendant-appellee has ₱2,803.00 more to pay to the plaintiff-appellant as unpaid rentals.

"6. In holding that the plaintiff-appellant withheld twenty-six (26) hectares from the defendant-appellee and in awarding the defendant-appellee ₱12,460.00 as damages therefor.

"7. In awarding ₱3,000.00 to the defendant-appellee as moral damages and ₱2,000.00 as attorney's fees.

"8. In ordering the plaintiff-appellant to reimburse the defendant-appellee the sum of ₱2,400.00 paid by the latter as a premium to the People's Surety & Insurance Co., on a bond for the lifting of the notice of lis pendens."

The first, third and fourth assigned errors concern the consideration for the sale of the hacienda Ubay-Sumag. In resolving the question of consideration, two basic documents have to be taken into account, to wit, the deed of sale (exhibit A) dated June 2, 1950, and the supplemental contract (exhibit G) dated June 3, 1950. Since the appellee admits in his brief that the payment to the plaintiff during the rest of his life of a monthly pension of ₱200 and of one-fifth (1/5) of the annual net profit from the said hacienda, is an additional consideration for the sale, the only question left is whether the sum of ₱25,000 mentioned in exhibit A should include or exclude the indebtedness of Fausto to the Lizares & Co. It is undisputed that the said obligation in the sum of ₱19,974.39 was paid by the defendant.

The statement of the consideration in exhibit A is as follows:

"That for and in consideration of the sum of ₱25,000.00 Philippine currency, including in this amount the various sums and pre-war existing accounts owed by me to the Lizares & Co., Inc., and which pre-war and existing accounts said purchaser Jovito Arimas assumed and liquidated with said Lizares & Co., Inc., ..."

In support of the *first* assigned error, the appellant contends that he signed exhibit A without reading it, on the faith of the representation made by the defendant that as part of the consideration for the said sale the latter would pay ₱25,000 in addition to paying the farmer's debt to the Lizares & Co. The defendant, on the other hand, argues that it was highly improbable that the plaintiff would sign exhibit A without reading it, because he is a holder of the

degree of Bachelor of Laws, and was formerly a councilor and later the vice-mayor of the municipality of Murcia.

In the ordinary course of the execution of a document where each party is presumably on his guard, this contention of the defendant would be plausible. But the circumstances surrounding this transaction were not ordinary. Our view of the evidence is that the plaintiff reposed exceptional trust and confidence in Jovito who was his favorite nephew. This can be readily seen from the general power of attorney (exhibit E) granted by the former to the latter (which power of attorney contains *all* the powers that a principal may grant to an agent for *any* legal business transaction), and from the letter written by Fausto to the Lizares & Co., dated August 16, 1947 (exhibit D), in which Fausto in part states:

"Any sum of money withdrawn by Mr. Jovito Arimas from your firm prior to the granting of this authorization, is hereby respected and accepted by the undersigned.

* * * * * * *

"Note:—Any correction, reform, alteration or complete change of this authorization is welcome and acceptable by the undersigned."

Only a person reposing extraordinary trust and confidence in another could have granted the said general power of attorney (exhibit E) and could have written the said letter (exhibit D). The defendant admitted this at the trial when he declared:

"Q—You have just stated that your uncle Fausto Arimas has full and complete trust and confidence in you. He has such a full and complete trust and confidence in you that he executed several powers of attorney in your favor, did he not.

"A—Yes.

* * * * * * *

"Q—After going over this general power of attorney, do you know that every possible power you need for any business or legal transaction is covered by this power of attorney?

"A—Yes."

"Q—As a favorite nephew he loved you and he trusted you and had full and complete confidence in you so much so that he would do almost anything for your sake, is it not true?

"A—Yes."

There is, therefore, the amplest ground to believe that without reading exhibit A, Fausto signed it on the faith of what Jovito told him as the consideration stated in it.

The defendant argues that the plaintiff was aware of the contents of exhibit A because of the testimony of Antonio Montelibano, assistant manager and cashier of the Lizares & Co., and a notary public, to the effect that the parties furnished him the data for the document, and that they signed it in his presence. Montelibano declared that on June 1, 1950, Jovito and Fausto gave him the data for exhibit A; that on the same day he drafted the document;

that the consideraion for the sale stated in exhibit A was what was agreed upon by the parties; that on June 2, 1950 Jovito and Fausto returned to his office and signed the document of sale in his presence; and that his interest in the transaction was the payment to the Lizares & Co. of the account of Fausto.

As against the evidence for the defendant concerning the execution of exhibit A, the evidence for the plaintiff-appellant shows that on June 2, 1950, Jovito and his wife passed for Fausto and his brother Custodio at Murcia, and took them to the hacienda Ubay-Sumag; that at the said hacienda Jovito handed to Fausto a prepared document saying that it was about the sale; that instead of reading it, Fausto asked Jovito what conditions were stated in it; that Jovito explained that according to the prepared document he was to pay Fausto the sum of ₱25,000 in addition to paying the obligation of Fausto to the Lizares & Co.; that Fausto remonstrated that the total consideration as explained was too small a price for the said hacienda; that Jovito then conferred with his wife in private; that thereafter he proposed to Fausto that besides paying him the sum of ₱25,000 and paying to the Lizares & Co. the indebtedness of Fausto to the said company, he was willing to pay Fausto a monthly pension of ₱200 and one-fifth (1/5) of the annual net profit derived from the said hacienda during the rest of the natural life of Fausto; that the said proposition was agreed to by Fausto; that on Jovito's return from Iloilo the following day he would bring the document covering the additional consideration consisting of the monthly pension of ₱200 and one-fifth (1/5) of the annual net profit from the said hacienda; that upon hearing the said assurance, Fausto signed the document (exhibit A) without reading it; that Jovito and his wife then hurriedly left for Iloilo; and that on June 3, 1950, the day following the signing of exhibit A, Fausto and Jovito signed the supplemental contract (exhibit G) embodying the additional consideration agreed upon the previous day.

The foregoing evidence is mostly that of Custodio, father of Jovito and brother of Fausto (t.s.n., Jalandoon, pp. 13–19), and is partly that of Ulpiano Bugna.

That exhibit G forms part of the consideration for the said sale is undeniable. Since the execution of exhibit G and the terms thereof are not disputed by the parties, it assumes a decisive role in the appreciation of the appellant's and the appellee's testimonial evidence with respect to the execution of exhibit A and the consideration therein mentioned.

There seems to be no doubt that the partial consideration given in exhibit G was agreed upon at the same time that

the parties agreed on the amount was supposed to appear in exhibit A. If the over-all consideration had not been agreed upon at the same time, there would have been no reason for the parties to agree on the terms of exhibit G after executing exhibit A. It is not normal human behavior for parties to a contract of sale to execute a deed of sale with a settled consideration and later agree on a further consideration. The consideration is generally agreed upon as a whole even if it consists of several parts, and even if it is contained in more than one instrument. Otherwise, there would be no price certain, there would be no meeting of the minds as to the consideration, and the contract of sale can not be perfected. (See Articles 1445 and 1450, Spanish Civil Code; Articles 1458 and 1475, new Civil Code.)

Antonio Montelibano declared at the trial that the consideration for the sale was agreed upon by the parties at his office in Iloilo City on June 1 and 2, 1950. His testimony is to the effect that the *only* consideration agreed upon and which he embodied in exhibit A was ₱25,000, including in this the amount of Fausto's indebtedness to the Lizares & Co.

In the consideration given in exhibit G is a part of the over-all consideration for the said sale, as it admittedly is, then the terms in exhibit G must have been agreed upon at the same time as the partial consideration embodied in exhibit A. But Montelibano emphasized that the *only* consideration agreed upon is that which is found in exhibit A. It is evident, therefore, that the parties did not agree on the consideration in Montelibano's presence on June 1 and 2, 1950, for if they did, he would have known on those dates the partial consideration that was to be embodied in exhibit G on the following day. Furthermore, if the parties were really at his office on June 1 and 2, 1950, and if they then and there agreed on the consideration, why was the consideration stated in exhibit G not incorporated in exhibit A? If the over-all consideration was agreed upon at one and the same time, then it could not have been agreed upon in the presence of notary public Montelibano, for otherwise he would have embodied it in just one document. If it was not agreed upon in the presence of Montelibano, then it must have been agreed upon elsewhere, that is, at the hacienda Ubay-Sumag. Montelibano's testimony with respect to the consideration cannot be reconciled with the inarticulate but compelling evidence that is found in exhibit G.

Exhibit G, therefore, cannot at all be considered as a mere afterthought. The defendant himself admits that exhibit G is an additional consideration of the sale. If the payments to be made under Exhibit G are an additional consideration, then they are necessarily a part of the total consideration or price certain. If they form part of the total considera-

tion or price certain, then they must have been agreed upon at the same time as the partial consideration that was supposed to appear in exhibit A. Otherwise the sale could not have been perfected since there would be no price certain (see article 1475, new Civil Code).

To confirm the validity of this reasoning, we will state it syllogistically. If the consideration that ought to appear in exhibit A is a partial consideration; if the consideration that appears in exhibit G is an additional consideration; and if the consideration that ought to appear in exhibit A and the consideration that appears in exhibit G together constitute the over-all consideraiton or the price certain, then this over-all consideration or price certain must of necessity have been agreed upon at one and the same time.

We are, therefore, of the opinion that the parties did not agree on the consideration at the office of Montelibano, and that neither was exhibit A signed by the parties at his office in Iloilo City. We are of the opinion, on the other hand, that the testimonial evidence for the appellant concerning the signing by him of exhibit A is in full accord with exhibit G.

The lower court expressed the opinion that the testimony of Antonio Montelibano is unbiased and that he has nothing to gain by not telling the truth. The record shows that Motelibano, by his own admission, intervened in the transaction between Fausto and Jovito primarily as assistant manager of the Lizares & Co., and only secondarily as notary public. And by his own admission, he was interested in the payment of the account of Fausto with the Lizares & Co., which account the company had been pressing Fausto to pay.

Because of his position in this company, Montelibano transacted business with Jovito upon the faith of exhibits D and F which Montelibano himself, upon request of the plaintiff, produced in court, and which conclusively evidence the extraordinary trust and confidence Fausto reposed in Jovito. And as for knowing the signature of Fausto, it is undisputed that Montelibano had known, and had transacted business with, Fausto since the year 1936. (See t.s.n., Jalando on, pp. 64 *et seg.*, 116, 119, 130). Thus it is not at all unlikely that knowing the signature of Fausto, Montelibano immediately notarized exhibit A when it was brought to him by Jovito for ratification. It is not uncommon, not at all uncommon, for a notary public to ratify a document in the absence of the parties thereto, especially when he is well acquainted with the parties. It is a rare notary public indeed who, without a twinge of his conscience, can say that the parties to *all* the documents he has ratified, have *all*, each and everyone, appeared before him and signed the

documents in his presence. It is only natural that Montelibano would maintain that exhibit A was signed in his presence in view of the statement to that effect in the notarial acknowledgment. It is entirely possible that his memory as to the events could be in error. *To say therefore that he lied is one thing; to say that he testified in good faith although erroneously is another. The latter, we believe.*

The contention that Fausto was with Jovito at the office of Montelibano on June 1 and 2, 1950, is further disproved by the testimony of Rogelia Arimas, wife of the appellant, who, in rebuttal, testified that in the first week of June, 1950, her husband did not go to Iloilo; that sometime in that week Jovito and his wife went with her husband and Custodio to the hacienda Ubay-Sumag, and that upon their return her husband said that he had signed a certain document.

The decision of the lower court is silent about this testimony of Rogelia. The defendant however argues in his brief that Rogelia's testimony does not deserve credence because if it were true, her husband would have told her about the sale; and that, citing the case of People *vs.* Kamantigue, G. R. No. L–4272, Feb. 25, 1952, not much weight can be given to a wife's testimony when it is the only corroborating testimony. Concerning the first argument, the record shows that the hacienda Ubay-Sumag was not conjugal property of Fausto and Rogelia but was inherited by Fausto. It is, therefore, not surprising that Fausto did not bother to give details to his wife about the document he had signed. As to the argument concerning the probative value of a wife's testimony, it must be said that the record shows that the testimony of Rogelia is only one of various pieces of evidence which support the appellant's claim.

The defendant further argues that it is highly improbable that Fausto signed exhibit A without reading it, because he was disposing of his only source of income; that the testimony of Custodio that he himself did not read exhibit A is incredible; and that it is likewise unbelievable that Fausto discovered the alleged fraud only after the lapse of three and a half years. It is our view however that if Fausto was disposing of his only source of income, he was expecting to get a fair return for it; that if he did not read exhibit A before signing it, it was because he trusted the word of Jovito implicitly and without reservation; that if Fausto himself who was the owner of the hacienda did not bother to read exhibit A, Custodio cannot be expected to have shown greater interest than Fausto; and that if Fausto discovered the fraud only after the lapse of three and a half years, the delay in the discovery is not surprising, considering that no period was fixed for the payment of the sum of ₱25,000, and

considering further the exceptionally generous and trusting nature of Fausto, in relation specifically to Jovito.

The evidence on the value of the hacienda, with the sugar quota appertaining thereto, is sharply revealing. The fair market value is ₱110,000, a little more or less, as proved by the appellant, and no satisfactory evidence to the contrary appears in the record. Set against this market value, the total consideration alleged by the appellant would appear to us to be fair, whereas that alleged by the appellee would be unconscionable. Let us consider the details. From the point of view of the appellant, the total consideration consists of an initial cash payment of ₱25,000, the payment of his account to the Lizares & Co. in the sum of almost ₱20,000, a monthly pension of ₱200 for life, and one-fifth of the net profit from the hacienda. If we translate these into actual sums, we arrive at the following figures. The monthly pension of ₱200 started in June 1950. In that year Fausto was already, if not nearing, sixty years of age. Although there is no clear evidence on record regarding the age of Fausto, we have the ages of his brother Custodio and his nephew Jovito to go by. At the time of the trial (1955) Custodio was 65 years old, Jovito 37. We will assume that in 1950 the fair life expectancy of Fausto was 15 years. (His life expectancy today would be very much shorter in view of his deteriorating state of health). The annual pension of ₱2,400 multiplied by 15 years would give us a total of ₱36,000. As to the fifth of the net profit, which is the share of Fausto, we will hereinafter show that he is entitled to ₱10,500, more or less, for every period of five years. We will assume that this amount will not be affected adversely in any manner by the uncertainties of the world market or by the gradually increasing burden imposed on the sugar industry by the Laurel-Langley agreement. ₱10,500 multiplied by 3 (15 years divided into multiples of 5) will give us a total of ₱31,500. Let us now add up. ₱25,000 plus ₱20,000 plus ₱36,000 plus ₱31,500, give us a grand total of ₱112,500, more or less. This grand total is obviously just about equal to the fair market value of the hacienda. Two points must however be emphasized, because they further underscore what we have stressed all along, which is, that the appellant's contention regarding the over-all consideration is entirely fair and far from onerous. The first point is that the total of ₱112,500 does not have to be paid in one lump sum by Jovito. Only about a third of it was expected by Fausto to be paid in the form of cash; the remaining two-thirds would be paid from the produce of the hacienda from year to year, and spread over a period of many years The second point is that if the fair market value of ₱110,000 were paid by Jovito in cash, this sum, if spread as savings deposits in local banks, would

yield at least ₱3,300 a year, at 3% interest (not compounded), or a total of at least ₱49,500 in 15 years. It is too evident that the interest alone would exceed by far the *initial* payments expected by Fausto from Jovito!

The monthly rental of ₱200 for the lease of the hacienda to Jovito in 1947 (exhibit B) has therefore no bearing on the consideration for the sale. It cannot at all be considered as a yardstick in the determination of whether the consideration stated in exhibit A is conscionable or not. It is of common knowledge that in 1947 the sugar industry was in the incipient stages of rehabilitation; most sugar cane planters were then just beginning to gather cane points for propagation purposes. Thus situated, how could the hacienda command a rental of more than ₱200 a month?

The lower court did not give credence to the testimony of Custodio Arimas and Ulpiano Bugna. As a general rule, the findings of the lower court on the matter of credibility are not disturbed on appeal. But this rule is not without exception. In the instant case, there appear in the record facts and circumstances of weight and influence, some of them already adverted to, which justify a departure from the general rule (People *vs.* Istoris, 53 Phil. 91).

Why should Custodio perjure himself and testify against the interests of his son, his own flesh and blood? What did he hope to gain? We have examined and re-examined the record, in search of something, anything, that might serve to discredit Custodio's testimony. We have found none. Upon the contrary, the record, together with every reasonable and fair inference therefrom, yields an abiding conviction that Custodio told the truth. Let us consider the following points: *First:* there is nowhere any evidence of a criminal record against Custodio that would serve to cast doubt, no matter how imperceptible, on his probity. *Second:* his testimony is firm and unshaken. Nowhere within the physical dimensions of the record is any indication that he altered or modified in any manner either the phraseology or the import of his testimony. *Third:* there is absolutely no evidence of any strain in the relations between Custodio and Jovito. Father and son seem to regard each other with respect and love. *Fourth:* it is against the experience of all human-kind that under the solemnity of an oath, a father would intentionally prejudice his own son, in the absence of any compelling adverse motive. And in so far as motive is pertinent to this discussion, we have also painstakingly considered the probability that Custodio may inherit from his brother (Fausto) in the event of the latter's death. And here again, we have, in a manner of speaking, reached a blank. We will assume that Custodio will survive Fausto and inherit all of the latter's worldly goods. What will he inherit? Not the land, because in-

asmuch as this action before us is one for specific performance, whatever Fausto will get will be in the form of money. And how will this money be spent? It will be used by Fausto to pay his debts, finance his day-to-day medical treatment (he is a bedridden paralytic), and provide shelter and subsistence for himself and his wife. If Fausto dies, part of this money will naturally be spent for his funeral. It seems rather indisputable, therefore, that Custodio's expectation, if indeed he expects to inherit, is a mere chimera, a will-of-the-wisp, as remote as it is illusory. Where then is the motive of self-interest that may be imputed to Custodio? The foregoing discussion thus persuades us to attach to Custodio testimony the full assurance and impact of truth.

While a notarial instrument ordinarily is of high probative value, its contents may be defeated by clear, strong, convincing evidence to the contrary. We are of the opinion that in this case before us a body of clear, strong, convincing evidence proves that Fausto signed exhibit A through fraudulent misrepresentation on the part of Jovito (see articles 1338 and 1339 of the new Civil code).

The lower court gives full credit to the defendant's declaration at the trial that he gave to the plaintiff the difference between ₱25,000 and ₱19,974.39. This self-serving testimony which is uncorroborated and unsupported by a receipt is a mere corollary of his testimony that the amount of ₱25,000 includes the account of Fausto which he had to settle with the Lizares & Co. Set against the overriding evidence for the appellant on the issue of consideration, this testimony of the appellee can hardly be given credence.

Upon the first assigned error, therefore, we are of the opinion and so hold that the lower court erred in not holding that there was fraud on the part of the defendant in the execution of exhibit A and in not holding that the defendant is under the obligation to pay ₱25,000 to the plaintiff as part of the purchase price of the hacienda Ubay-Dumag.

One more point needs to be disposed of. Although the appellee has not found it necessary or convenient to raise the matter in his pleading or brief, we feel, for the sake of the intrinsic purposes of this decision, that we must touch upon the seemingly peculiar procedure on the part of Fausto of asking for specific performance on the contract with out first asking for the reformation thereof under articles 1359, *et seq.* of the new Civil Code. While the logical step for Fausto, under the circumstances pleaded by him, would seem to be to ask for the reformation of the contract prior to asking for specific performance thereon, we are of the opinion that our courts of justice can grant him the relief and equity he prays for. Our law on the reformation of instruments is of common law origin. In jurisdiction, like

ours, where courts are both of law and of equity (see Rustia *vs.* Franco, 41 Phil. 280), a court may construe a contract, treat it as reformed, and render proper judgment on the basis thereof. ". . . . . in jurisdictions in which the distinctions between law and equity are abolished, or in which both forms of relief are administered by the same court, in an action at law upon an instrument the court may in a proper case *construe the contract as it was intended by the parties, or supply matters omitted either by mutual mistake or fraud, and render a proper judgment on the basis thereof, just as if there had been first a reformation of the contract. The judgment may confer only the final legal remedy, the preliminary equitable relief being assumed as a prerequisite, but not in terms awarded*" (45 Am. Jur. 589). (Italics supplied)

The *second* assigned error concerns the appellant's claim for moral damages. The record shows that the appellee's act of fraudulently misrepresenting the partial consideration for the sale of the hacienda Ubay-Sumag in exhibit A contributed in a large measure to the serious anxiety and mental anguish from which the appellant suffered. The the appellant has been a paralyzed invalid since February, 1954, is an established fact. The appellee, however, contends that Fausto became an invalid because of his political activities for three days and three nights preceding his first stroke. Whatever may have been *the real cause of his paralysis,* we are of the opinion that he is entitled to moral damages under articles 21 and 2217 of the new Civil Code by reason of the appellee's act of fraudulently misrepresenting the consideration in exhibit A, which was the proximate cause of his anxiety and mental anguish. The amount of moral damages (₱20,000) prayed for by the appellant is, however, excessive. We are of the opinion, and so hold, that under the attendant circumstances the appellant is entitled to moral damages in the sum of ₱5,000.

The *third* and *fourth* assigned errors concern the payment of the partial consideration given in exhibit G. The appellant claims that the monthly pension of ₱200 has not been paid since September, 1954. This was admitted by the appellee in his amended answer and at the trial, but the lower court is of the opinion that up to the handing down of its decision there was no pension in arrears. This opinion is based on the findings that the appellee has an overpayment of ₱4,300 in the case of one-fifth (1/5) of the net profit from the said hacienda. As for the fifth of the net profit, the appellant claims, on the other hand, that as of the end of the crop year 1954–1955 the appellee was in arrears in the sum of ₱5,952.19. It becomes necessary, therefore, to determine how much was the total net profit for the

period concerned and how much has been paid on account of the fifth of the net profit.

According to Rogelia, the wife of the appellant, the sum of ₱300 had been paid every month by the appellee from October, 1951 to August, 1954. If the sum of ₱200 for the monthly pension is deducted, the balance of ₱100 a month for this period could be considered as paid on account of the fifth of the net profit. The appellee, however, adduced evidence showing that ₱100 was paid every month from February, 1951, instead of October, 1951, on account of the fifth of the net profit. Rogelia's figures were from a memorandum copied from an original record which could not be produced in court. In view of the possibility of a mistake in her copying of the figures from her original record, we are inclined to consider as correct the appellee's declaration that the monthly payment of ₱100 on account of the fifth of the net profit began in February 1951. As of August, 1954, therefore, this monthly payment of ₱100 amounted to a total of ₱4,300 for a period of forty-three months. To this should be added the sum of ₱1,800 admitted by the appellant as having been paid by the appellee for the hospital bills of the former, making a total of ₱6,100 paid on account of the fifth of the net profit from the said hacienda.

The next question is the period that should be embraced in the computation of the net profit. The appellee argues that the crop year 1950–1951 should not be included in the computation, contending that this crop year belonged to the period of his lease. Since the lease was terminated on June 2, 1950, we are of the opinion that under exhibit G, which provides for the payment of a fifth of the net profit at the end of crop year, the crop year 1950–1951 ought to be included.

The next question to determine is the net profit derived from the said hacienda during the crop years 1950–1951 to 1954–1955. In its decision, the lower court states that the unrebutted testimony of the appellee is to the effect that for the years 1951 to 1955 his total net profit amounted to ₱9,000 only. We, however, find in the record a convincing preponderance of evidence to the contrary which the lower court failed to take into account. While the appellee testified on his profits and losses in a sweeping manner without the benefit of any record or accounting, the appellant presented exhibits B and B–1 to B–5 showing the sales of sugar assigned by Jovito to the Philippine National Bank, Iloilo Branch, for the crop years 1952–1953 to 1954–1955; Exhibits F and F–1 to F–11 showing the production of sugar from the hacienda Ubay-Sumag for the crop years 1950–1951 to 1954–1955; exhibits L and L–1 to L–2 showing the crop loan records of Jovito with the Bacolod-Murcia Milling Co., Inc., in connection with the hacienda Ubay-

Sumag for the crop years 1950–1951 and 1951–1952; and the appellee's own testimony as to his cost of production. Exhibits F and F–1 to F–11 and exhibits L and L–1 to L–2 are unimpeached records from the Bacolod-Murcia Milling Co., Inc., where Jovito has been milling his sugar cane. Exhibits B and B–1 to B–5 are also unimpeached records from the Philippine National Bank, Iloilo Branch, where Jovito has been getting his crop loans.

The evidence adduced by the appellant showing the total net selling price of the appellee's net share of sugar produced from the hacienda Ubay-Sumag is as follows:

Crop Year	Total Planter's Net Share of Sugar Produced from Hacienda Ubay-Sumag	Total Net Selling Price
1950–1951	1,417.83 piculs	₱19,897.43
1951–1952	2,254.48 piculs	₱29,524.40
1952–1953	3,203.18 piculs	₱46,481.23
1953–1954	3,120.97 piculs	₱38,571.14
1954–1955	1,390.21 piculs	₱17,635.80
	Total	₱152,110.00

The appellee does not question the figures showing the total net selling price of his sugar for the five crop years mentioned above. But he questions the total cost of production as deduced by the appellant from the appellee's own testimony.

To determine the net profit, the total cost of production should be deducted from the total net selling price In proving Jovito's cost of production, the appellant called him to the witness stand as an adverse witness under Section 83 of Rule 123 of the Rules of Court. In a lengthly examination, the following facts were adduced by Jovito: his average production per hectare is 90 piculs; his average cost of production per hectare excluding expenses for gasoline and tires is ₱435.50; his average expense for gasoline for hauling twenty-one tons of sugar cane is ₱5; his annual expenses for truck tires is ₱720; and his average production per ton of sugar cane is 1.9 piculs of sugar. Upon the data thus given, the appellant tabulates in his brief the appellee's cost of production for the crop years 1950–1951 to 1954–1955, as follows:

Crop Year	Area in Ha.	Cost of Production at ₱435.50 a Ha. Excluding Gasoline and tires	Cost of Gasoline and tires	Total Cost of Production
1950–1951	26.7 Ha.	₱11,627.85	₱1,020.00	₱12,647.85
1951–1952	42.4 Ha.	₱18,465.20	₱1,200.00	₱19,665.20
1952–1953	60.3 Ha.	₱26,260.65	₱1,400.00	₱27,660.65
1953–1954	58.7 Ha.	₱25,563.85	₱1,380.00	₱26,943.85
1954–1955	26.1 Ha.	₱11,366.55	₱1,015.00	₱12,381.55
			(Total	₱99,299.10)

The appellee argues that the cost of production given in the above tabulation is erroneous and should be discarded *in toto* because (1) the production expense is fixed at ₱435.50 per hectare for the five crop years whereas production expenses actually were variable; (2) in taking ₱435.50 as the estimated cost of production, the appellant did not include other expenses of production; (3) the total number of hectares planted to sugar cane is incorrectly obtained by dividing the planter's net share by a divisor corresponding to 59% of 90 piculs; and (4) the computation is based on the wrong premise that all land planted to sugar cane yields 90 piculs per hectare.

Concerning the first objection, the record shows that the cost of production of ₱435.50 per hectare (which excludes the cost of gasoline and tires) was as of June 2, 1955, as shown by the appellee's own testimony:

"Q—And to the amount of ₱330.50, which is the cost of cultivation up to the time the field is closed, we added ₱105.00 as the cost of milling the sugarcane per hectare; did we not?

"A—Yes, sir.

"Q—That gave us a total of ₱435.50 as the total cost of producing sugar from a hectare of land as of June 2, 1955, is it not?

"A—Yes, sir.

As of June 2, 1955, the minimum wage law was already in force. It is, therefore, safe to presume that the average cost of production admitted by the appellee as of June 2, 1955 was based on a fair estimate of the average cost of production (excluding the cost of gasoline and tires) for the five crop years ending with the crop year 1954–1955.

The second objection would be well-taken only if we add the average cost of gasoline and tires (₱28.08) for the period of the five crop years involved to ₱435.50 a hectare, and thus get an average cost of production of ₱463.58 per hectare for the entire period.

As regards the third objection, the determination of the area planted to sugar cane, arrived at by dividing the planter's net share by a divisor corresponding to 59% of 90 piculs, cannot be the subject of serious objection. The appellee declared at the trial that his average production ranged from 80 to 120 piculs per hectare and that he has some fields that can produce 150 piculs per hectare. In view of this testimony, it would seem that an average yield of 90 piculs per hectare for the five crop years concerned is an understatement. At any rate, it appears to be a safe enough basis for the purposes of the appellee. If it is, then speaking of averages, the area planted to sugar cane for a particular crop year is fairly determined by dividing the planter's net share of sugar for that crop year by 53.1 (59% of 90 piculs), the planter's net share out of 90 piculs.

In connection with the fourth objection, it would seem, as already stated above, that the average of 90 piculs per hectare is an understatement. Here is the appellee's own testimony:

"Q—In planting sugarcane you naturally selected the fertile portion of the hacienda, did you not?
"A—Yes.
"Q—And producing sugar cane in a fertile piece of land costs less than producing sugarcane in a poor piece of land, is it not?
"A—Yes.
"Q—The soil in the portion of Hda. Ubay-Sumag you have planted with sugarcane which you said is fertile, on the average about how many piculs do you produce?
"A—If there are no calamities I can produce 120 piculs per hectare but if there is typhoon or pests I can produce only about 80 per hectare.
"Q—Is it not true that there are fields there that could produce 150 piculs per hectare?
"A—Yes, there are some."

We are, therefore, of the opinion that the appellee's cost of production as shown in the appellant's tabulation given above is correctly premised on the appellee's own testimony.

The total net profit for the five crop years concerned is derived by deducting the total cost of production, which is ₱99,299.10, from the total net selling price, which is ₱152,110.00. One-fifth of the difference is ₱10,562.19, the fifth of the net profit that should pertain to the appellant for that period of five crop years. As has already been stated, the total amount paid by the appellee, including the sum of ₱1,800 for hospital expenses of Fausto, which should be considered as paid on account of the fifth of the net profit, is ₱6,100. This amount deducted from the fifth of the total net profit of ₱10,562.19 leaves the sum of ₱4,462.19 still due to the appellant on account of the fifth of the net profit from the hacienda Ubay-Sumag for the crop years 1950–1951 to 1954–1955.

On the third and fourth assigned errors, therefore, the appellant is entitled to the monthly pension of ₱200 from September, 1954, and to the sum of ₱4,462.19 on account of the fifth of the net profit from the hacienda Ubay-Sumag as of the end of the crop year 1954–1955.

As for the security for future payments prayed for by the appellant, we are of the opinion that he is not entitled to it. Articles 2024, *et seg*, of the new Civil Code, cited by him, are not applicable. The life pension under discussion is only a part of the entire consideration for the sale, and is not itself the main aleatory contract of life annuity.

The *fifth* assigned error concerns the appellant's claim for ₱2,803 in unpaid rentals. The hacienda Ubay-Sumag was

leased by the appellant to the appellee on September 30, 1947 at a monthly rental of ₱200 (exhibit H). The lease was terminated on June 2, 1950 when the former sold it to the latter. For the period from September 30, 1947 to June 2, 1950, the rentals amounted to a total of ₱6,400. The appellant adduced testimonial evidence showing that out of this amount only ₱3,597 was paid in irregular installments. The appellee, on the other hand, adduced testimonial evidence showing that all rentals had been paid. Since nothing was said about unpaid rentals when the parties agreed on the sale of the said hacienda, there is in favor of the appellee the presumption that when the said hacienda was sold to him on June 2, 1950 all these rentals had been paid. The evidence for the appellant in this respect is not sufficient to overthrow this presumption. We are therefore of the opinion, and so hold that the lower court did not err in dismissing the plaintiff's claim for unpaid rentals.

The *sixth* assigned error concerns the award by the lower court of the sum of ₱12,460 as damages in favor of the appellee. In this respect, the lower court found that the appellee was deprived of the use of 26 hectares out of the total area of the hacienda Ubay-Sumag for seven years and considers the sum of ₱12,460 as the total value of the produce that could have been derived therefrom for this period. When Fausto and Jovito signed the contract of lease (exhibit H) on September 30, 1947, the former granted the latter on the same day a general power of attorney (exhibit E). Among the many broad powers granted in exhibit E is the power to ask, demand, sue for and/or recover by suit or otherwise, anything of value belonging to the principal. As lessee of the said hacienda, Jovito knew in 1947 that he was not in possession of the said 26 hectares. He also knew that the said area was in the possession of one Generoso Villanueva. Why then did he not exercise the power granted to him by Fausto to recover this area of 26 hectares in 1947? And when he bought the said hacienda in 1950, why did he not take steps to recover this portion from Generoso Villanueva? Why should Jovito now hold Fausto liable for his own negligence? We are of the opinion, and so hold, that it was manifest error for the lower court to award these damages to the appellee.

The *seventh* assigned error concerns the award by the lower court in favor of the defendant-appellee of ₱3,000 as moral damages and ₱2,000 as attorney's fees, based on the finding of the lower court that the action instituted by the appellant is malicious. Having found, however, that the plaintiff's action is meritorious, we hold that the appellee is entitled to neither moral damages nor attorney's fees.

The *eight* assigned error concerns the award of ₱2,400 in favor of the appellee, the amount he paid to the People's Surety & Insurance Co. as premium on a bond used as a substitute for the notice of *lis pendens* relative to this action. The original complaint filed on August 23, 1954 was for rescission of the contract of sale and for damages. The plaintiff filed a notice of *lis pendens* affecting the parcels of land involved in the action for rescission. On September 8, 1954 the defendant filed a motion (exhibit O) praying for the lifting of the notice of *lis pendens* and offered to file a bond in lieu thereof in the sum of ₱11,400 or in whatever amount the court might deem just and equitable. In spite of the plaintiff's vigorous opposition (exhibit O–1) to the said motion, the court granted it, ordering that a bond for ₱80,000 in lieu of the notice of *lis pendens* be filed (exhibit O–2). The court fixed the bond at ₱80,000 after considering the fact that the defendant was willing to file a bond in whatever amount the court might deem just and equitable. We are of the opinion that the plaintiff cannot be held responsible for the premium of ₱2,400 on this bond because, in the first place, the substitution of the notice of *lis pendens* with a bond was vigorously opposed by him, and because, in the second place the defendant himself was responsible for the enormity of the bond.

WHEREFORE, the judgment appealed from is hereby reversed, with the exception of the dismissal of the claim for unpaid rentals and the denial of the demand for sufficient security for the payment of the pension of ₱200 a month, which are hereby affirmed; and the defendant is hereby ordered to pay to the plaintiff (1) the sum of twenty-five thousand pesos (₱25,000), plus interest at the legal rate from the commencement of this action until fully paid, as a partial consideration for the sale of the hacienda Ubay-Sumag; (2) the sum of five thousand pesos (₱5,000) in the concept of moral damages; (3) the monthly pension of two hundred pesos (₱200) from September, 1954; and (4) the sum of four thousand four hundred sixty-two pesos and nineteen centavos (₱4,462.19) as the unpaid balance of one-fifth of the net profit derived from the hacienda Ubay-Sumag for the crop years from 1950–1951 to 1954–1955, inclusive, plus interest at the legal rate from the commencement of this action until fully paid. No special pronouncement as to costs.

IT IS SO ORDERED.

De Leon and *Makalintal, JJ.*, concur.

Judgment reversed.

LEGAL AND OFFICIAL NOTICES

Courts of First Instance

[FIRST PUBLICATION]

REPUBLIC OF THE PHILIPPINES
COURT OF FIRST INSTANCE OF AGUSAN
FIFTEENTH JUDICIAL DISTRICT

NATURALIZATION CASE NO. 22.—*In the matter of the petition of* AGUSTIN LIM DY *to be admitted a citizen of the Philippines.*

NOTICE OF HEARING

To the Honorable Solicitor General, Manila; Agustin Lim Dy, petitioner, Butuan City, and to all whom it may concern:

Whereas, a verified petition for Philippine citizenship pursuant to the provisions of Commonwealth Act No. 473, as amended by Republic Act 530, has been presented in this court by the herein petitioner, who alleges that his present place of residence is poblacion, City of Butuan, Philippines; that his trade or profession is that of an employee in charge of "Lee Hann Enterprises", a business establishment located in the City of Butuan, from which he derives an annual income of ₱1,800.00 as salaries; that he was born on January 25, 1953, in Butuan, Agusan (now city of Butuan), at present a citizen or subject of the Nationalist Republic of China, under whose laws Filipinos may become naturalized citizens or subjects thereof; that he is single and has not gone to China, nor resided in any foreign country since birth until the filing of this petition; that he has filed his declaration of intention to become a Filipino citizen; that he is able to speak and write English and the Cebuano language and has studied in the following schools; Cebu Chinese School at Cebu City; Butuan Public Central School at Butuan City; Agusan Institute at Butuan City; Father Uries College, Butuan City from 1954 to school year 1958–1959 thus completing his fourth year regular commerce course in said College; that it is his intention to become a citizen of the Philippines and he believes in the principles underlying the Philippine Constitution, has conducted himself in a proper and irreproachable manner during the entire period of his residence in the Philippines in his relations with duly constituted government, has mingled socially with the Filipinos and with the intention in good faith to become a citizen of the Philippines and to renounce absolutely all allegiance and fidelity to any foreign state particularly to the Republic of China and that he possess all the qualifications and none of the disqualifications provided by law, citing as witness Messrs. Sergio F. Go and Wenceslao B. Rosales, both of age, Filipinos and residents of the City of Butuan and whom he proposes to testify at the hearing of this petition.

Wherefore, you are given notice that the said petition will be heard by this court, on June 16, 1960, at 8:30 a.m., before this Court at Butuan City, Philippines.

Let this notice be published at the expense of the petitioner, once a week for three consecutive weeks in the newspaper, the *Nueva Era*, edited in Manila and of general circulation in this province of Agusan and Butuan, for three consecutive issues of the *Official Gazette* and also let copy of the notice and petition be posted in a conspicuous place in the office of the Clerk of Court.

Witness the Hon. Montano A. Ortiz, judge of this court, this 16th day of October, 1959 at Butuan City.

MACARIO C. CONDE
Clerk of Court

[41–43]

REPUBLIC OF THE PHILIPPINES
COURT OF FIRST INSTANCE OF THE CITY OF BAGUIO
SECOND JUDICIAL DISTRICT

NATURALIZATION CASE NO. 68.—*In the matter of the petition to be admitted a citizen of the Philippines.* JUY PING SHANG (JOSEPH JUY HENG), *petitioner.*

NOTICE OF PETITION FOR PHILIPPINE CITIZENSHIP

To the Honorable Solicitor General, Manila, Attys. Reyes and Cabato, counsels for the petitioners, Mr. Juy Ping Shang (Joseph Juy Heng), Km. 85, barrio Abatan, municipality of Buguias, Mountain Province; and to all whom it may concern:

Whereas, a petition for Philippine citizenship pursuant to Commonwealth Act No. 473 as amended, has been presented in this court by Juy Ping Shang: (Joseph Juy Heng), who alleges, among others: that his full name is Juy Ping Shang (Joseph Juy Heng); that his present place of residence is Km. 85, barrio Abatan, municipality of Buguias, Mountain Province; that he was born on August 15, 1936 in the City of Baguio; that his trade or profession is an employee in which he derives an average annual income of ₱960.00 more or less with free board and lodging; that he is at present a citizen